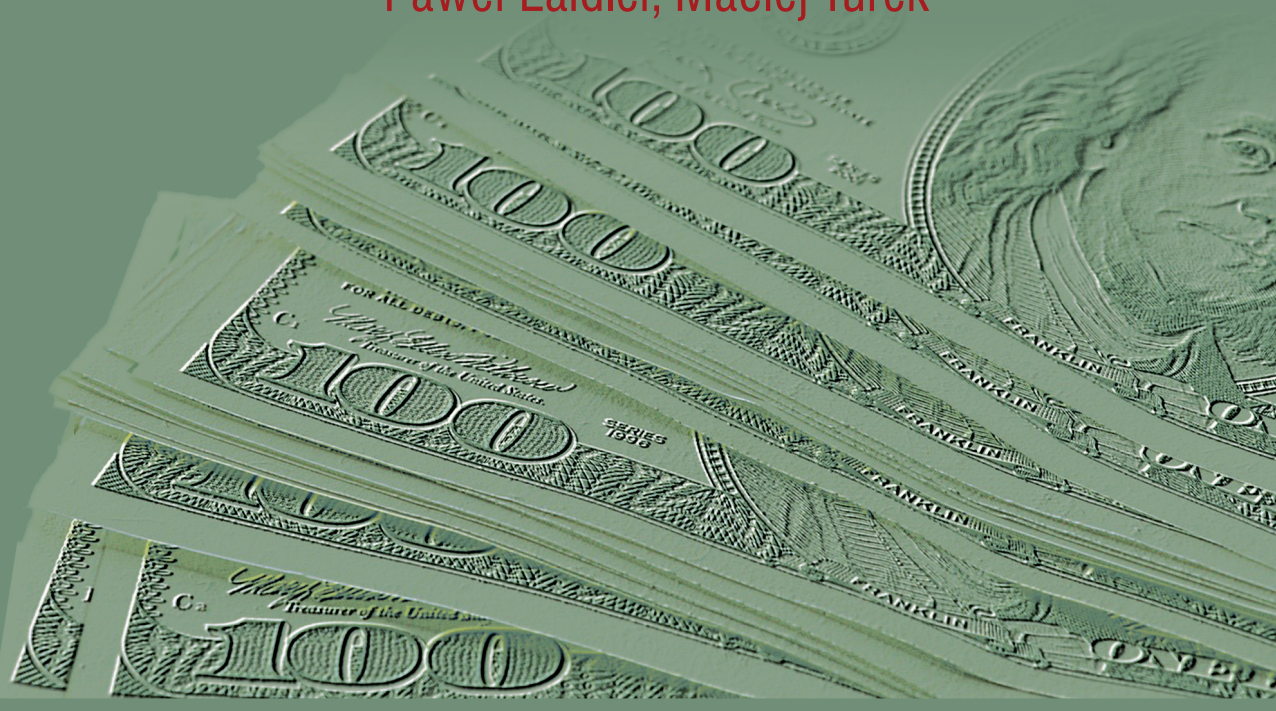
Basic American Documents
Series Editor Andrzej Mania

Basic Documents in U.S. Federal Campaign Finance Law

Paweł Laidler, Maciej Turek



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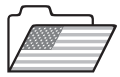

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Introduction

The significant growth of scholarship on the issue of money in American politics in recent years does not mean that the problems with these matters have emerged only recently. In fact, they have been there since the beginnings of the American political system, and the scope of their influence has depended on the given state of the regulations – legislative and Supreme Court opinions – as well as the creativity of candidates and campaign operatives.

In the 19th century the problem of money in elections was of little interest to legislators, though this did not mean there was a lack of regulations concerning the operation of the selection, appointment and election of public officers on the federal level. The laws implemented at that time, however, had limited range, and resulted either from political scandals or social concerns about corruption among government officers rather than from a general necessity to regulate campaign finance issues. In the 20th century, reformers began to see campaign laws as a way to solve the problem of the proper regulation of the growing impact of money on politics and politicians during election campaigns. Due to the changing perspectives of ideologically based political forces, electoral procedures became less important than questions concerning the proper functioning of American democracy, the rule of law, and the scope of such crucial individual rights as freedom of speech or broad access to information. Today, the discussion over the proper scope of campaign finance regulations is highly politicized and divides representatives of the two major political parties as to the scope of control over said regulations. Money and politics have always been connected, but the active participation of big business, corporations, and political action committees as contributors to congressional and presidential campaigns have made the system prone to and dependent on high levels of funding. The issue has never been so tense and challenging as it is now, as the amount of money pumped into political campaigns at the beginning of the 21st century increases the concern of various social and political circles over the proper functioning of American democracy. The problem of disclosure of financial reports by candidates and their contributors, the question of the scope of restrictions on individual and corporate funding, individual and aggregate limits on spending, proper enforcement of campaign finance laws, and many other vital issues regarding the operation of the electoral process seem today to be among the biggest challenges to democratic governance in the United States.

The question of who contributes, and how and why, has become one of the major problems analyzed by U.S. and international researchers, who discuss the issue of money

in politics either in a particular electoral cycle, or from a more general perspective, reaching conclusions about the direction of federal campaign finance reforms. These studies are later presented at international conferences and/or are the subject of edited or individually authored books regarding various aspects of the financing of election campaigns, contributing to the discussion on the constitutionality of contemporary regulations on the issue. Books authored and edited by Robert G. Boatright, Anthony Corrado, Kurt Hohenstein, Gerald C. Lubenow, David B. Magleby, Stephen K. Medvic, Michael G. Miller, Robert E. Mutch, Raymond de la Raja, John Samples, Frank J. Sorauf, and Clyde Wilcox, are just part of the large input of scholars into this debate. The Polish scholars Pawel Laidler and Maciej Turek, from the Institute of American Studies and Polish Diaspora of the Jagiellonian University in Kraków, have also contributed to this field through their research on the evolution of federal campaign finance laws and its impact on the changing image of American democracy, derived especially from the discussion between Republicans and Democrats on the meaning of the First Amendment in connection with the compelling state interest to protect the society against the uncontrolled flow of big money and corruption of the electoral system. Thanks to the receipt of a grant from the National Science Center of Poland (UMO-2013/09/B/HS5/01086), since 2014 Laidler and Turek have been focusing on an analysis of the contemporary scope of campaign finance law in the United States with special reference to the debate on the future of American democracy. Considering recent Supreme Court decisions, the issue is at the center of political and legal debate; therefore it is important to acknowledge the ways in which federal campaign reforms have evolved throughout American history.

The purpose of the volume *Basic Documents in U.S. Federal Campaign Finance Law* is to present that evolution of the meaning of money and politics in American governance, with a special focus on the regulations and norms which have shaped the current understanding of campaign finance in the U.S. It is important to acknowledge the main reasons for federal legislation on campaign finance, its outcomes, and the ways in which issues have been challenged in the courts, focusing especially on the changing interpretations of the Supreme Court towards the issue. The book contains a short introduction to every important piece of legislation or Court decision, in which the authors have presented the background of the legislation and its main purposes and substance, as well as the facts leading to legal disputes over the legislation's constitutionality. Each introductory piece is followed by the most crucial excerpts from legislative acts or Supreme Court opinions on campaign finance, so that readers are able to analyze for themselves the substance and form of the regulations on the issue. According to the authors, all twenty nine documents presented in the volume (14 acts of Congress, and 15 Court decisions), should be considered the main legal source of the debate on the proper scope of money in federal election campaigns. Although most of the excerpts presented relate to federal laws, there are a few references to state laws when the issue at stake has a direct effect on the national discussion on campaign finance.

All excerpts have been prepared on the basis of the original text of every piece of legislation and judicial opinion, which were extracted from various websites collecting historical documents on American politics and law, such as: Findlaw (www.findlaw.com), Jurist (www.jurist.org), Oyez at the Chicago-Kent College of Law (www.oyez.

org), The Avalon Project of the Yale Law School (www.avalon.law.yale.edu), and the Legal Information Institute at the Cornell University Law School (www.law.cornell.edu). In preparing the volume the authors analyzed various books and articles on federal campaign finance law, which are listed at the end in the 'Further Readings' section. Due to the limited form of the volume, thorough research on the topic should be made with reference to the original documents, as the excerpts focus only on the most important provisions or most crucial arguments used in the discussion over the proper scope of campaign finance in the United States of America.

The Authors would like to thank the Editor of the Basic American Documents Series, Professor Andrzej Mania, who, as the Chair of American Studies at the Jagiellonian University, has always been of significant formal and substantive support. Our gratitude goes also to Professor Garry Robson, who was responsible for the proofreading of the commentaries to the documents.

The Civil Service Reform Act

22 Stat. 403 (1883)

The first campaign finance legislation on the national level was the provision in *The Naval Appropriations Bill* of 1867, which banned political contributions from workers of the navy yards. The law did not, however, change the character of the Gilded Age civil service, which was built on patronage and the so-called spoils system. The awarding of governmental posts often resulted in the funding of political parties by levies on the salaries of federal workers. After the assassination of President James Garfield, and particularly the midterm congressional election of 1882, civil service system reform became a leading issue in Congress. This led to the passage of *The Civil Service Act* in 1883, known as the Pendleton Act from the name of its sponsor, Senator George Pendleton.

The main purpose of the legislation was to create a new category of federal employees, who would be appointed through competitive selection on the basis of their qualifications for office. The establishment of entrance exams for the civil service hopefuls was aimed at building a more efficient and competent bureaucracy, loyal first and foremost to their office or government agency and not to politicians, to whom they would no longer owe their positions. Although, at the beginning, the Act referred to only 10% of federal workers, its scope broadened in the following decades to cover more than half of employees by the turn of the 20th century. It also forbade this class of employees from donating money to political campaigns. Based on the merit system, the Act was intended to lessen political power over the civil service. The Pendleton Act was the first serious regulation to reform the administration of elections, reduce the impact of political parties on federal employees, and aim at the de-politicization of government officers in the United States.

An act to regulate and improve the civil service of the United States. . .

SECOND. And, among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

First, for open, competitive examinations for testing the fitness of applicants for the public service now classified, or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will

fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

Second, that all the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

Third, appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been a resident of such place.

Fourth, that there shall be a period of probation before any absolute appointment or employment aforesaid.

Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Sixth, that no person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

Seventh, there shall be non-competitive examinations in all proper cases before the commission, when competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.

Eighth, that notice shall be given in writing by the appointing power to said commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals and of the date thereof, and a record of the same shall be kept by said commission. And any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons there-for shall be stated in the annual reports of the commission. . .

SEC. 11. That no Senator, or Representative, or Territorial Delegate of the Congress, or Senator, Representative, or Delegate elect, or any officer or employee of either of said houses, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned ill soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States.

SEC. 12. That no person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever. . .

SEC. 14. That no officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of the House of Representatives, or Territorial Delegate, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever.

SEC. 15. That any person who shall be guilty of violating any provision of the four foregoing sections shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding five thousand dollars, or by imprisonment for a term not exceeding three years, or by such fine and imprisonment both, in the discretion of the court.

The Tillman Act

34 Stat. 864 (1907)

Despite the intent of legislators, the Pendleton Act did not fully diminish the influence of politics on the operation of the government, especially in the selection and removal of federal employees. Furthermore, in the last decade of the 19th century the issue of money and politics became a major concern to party leaders and American society, when candidates for political posts raised unprecedented amounts of funding during election campaigns, particularly from private business and corporations. This was observed especially in the 1896 presidential campaign, when the Republican Party candidate, William McKinley, often collected more than $100,000 in a single donation, thanks to the implementation of an organized, corporate system of fundraising by party leader Mark Hanna. In sum, throughout only few election cycles, some candidates were able to spend more than $3 million in a single race, creating a social perception of corrupt government. As large companies were now filling the coffers of parties and candidates with large contributions- and the 1904 presidential campaign of Theodore Roosevelt did not avoid allegations of wrongdoing – in his State of the Union Addresses of 1905 and 1906 the president urged legislators to establish a law which would control the flow of money during electoral campaigns and prohibit national banks and corporations from contributing to the electoral efforts of candidates for federal offices.

Democratic Party Senator Benjamin Tillman initiated a bill aimed at reducing the impact of corporations and big money on congressional and presidential elections. Despite Republican obstruction, *The Tillman Act* was signed into law in 1907, becoming in time one of the longest standing campaign finance regulations. It was the first to ban corporations from making campaign donations, and demanded the filing of financial reports after the election cycle.

An Act to prohibit corporations from making money contributions in connection with political elections

> Be it enacted, that it shall be unlawful for any national bank, or any corporation organized by authority of any laws of Congress, to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and

Vice-Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator.

Every corporation which shall make any contribution in violation of the foregoing provisions shall be subject to a fine not exceeding five thousand dollars, and every officer or director of any corporation who shall consent to any contribution by the corporation in violation of the foregoing provisions shall upon conviction be punished by a fine of not exceeding one thousand and not less than two hundred and fifty dollars, or by imprisonment for a term of not more than one year, or both such fine and imprisonment in the discretion of the court.

The Publicity Act

36 Stat. 822 (1910)

The 1911 Amendments to the Publicity Act

37 Stat. 25 (1911)

The Tillman Act did not address all of the important issues concerning the regulation of campaign finance on the federal level, such as spending limits, and pre-election disclosure of contributions by political committees. From 1907, numerous representatives and Senators had pressed for the implementation of further campaign finance regulations, which would provide the system with greater transparency and accountability. As a result, three years later the Republican-led Congress created a new law, which established the system of public disclosure of campaign funds. However, not all committees contributing to the electoral process were subject to this legislation.

The problem was that The Federal Corrupt Practices Act of 1910, also known as The Publicity Act, made campaign committees operating in two or more states report their House of Representatives' campaign receipts and expenditures. But as it did not require that the disclosure be made before the election and was limited only to election years, it was amended a year later. In 1911 Congress expanded the regulation, now demanding the revelation of both House and Senate campaign funds before and after elections, both primary and general. The 1911 amendment also established the first ever limits to campaign spending on the federal level, setting it at a total of $5,000 for House and $10,000 for Senate candidates. The law was in force until the early 1920s, when the Supreme Court struck down some of its key provisions in *Newberry v. United States*.

An Act Providing for publicity of contributions made for the purpose of influencing elections at which Representatives in Congress are elected

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the term "political committee" under the provisions of this Act shall include the national committees of all political parties and the national congressional campaign committees of all political parties and all committees, associations, or organizations which shall in two or more States influence the result or attempt to influence the result of an election at which Representatives in Congress are to be elected. . .

Sec. 3. That every payment or disbursement made by a political committee exceeding ten dollars in amount be evidenced by a receipted bill stating the particulars of expense, and every such record, voucher, receipt, or account shall be preserved for fifteen months after election to which it relates.

Sec. 4. That whoever, acting under the authority or in behalf of such political committee, whether as a member thereof or otherwise, receives any contribution, payment, loan, gift, advance, deposit, or promise of money or its equivalent shall, on demand, and in any event within five days after the receipt of such contribution, payment, loan, gift, advance, deposit, or promise, render to the treasurer of such political committee a detailed account of the same, together with the name and address from whom received, and said treasurer shall forthwith enter the same in a ledger or record to be kept by him for that purpose. . .

Sec. 8. That any person may in connection with such election incur and pay from his own private funds for the purpose of influencing or controlling, in two or more States, the result of an election at which Representatives to the Congress of the United States are elected all personal expenses for his traveling and for purposes incidental to traveling, for stationery and postage, and for telegraph and telephone service without being subject to the provisions of this Act.

Sec. 9. That nothing contained in this Act shall limit or affect the right of any person to spend money for proper legal expenses in maintaining or contesting the results of any election.

*

An Act to amend an act entitled "An Act Providing for publicity of contributions made for the purpose of influencing elections at which Representatives in Congress are elected" and extending the same to candidates for nomination and election to the offices of Representative and Senator in the Congress of the United States and limiting the amount of campaign expenses. . .

Sec. 2. That. . . a new section be inserted after section seven of the said original act to read as follows: "Sec. 8 The word 'candidate'. . . shall include all persons whose names are presented for nomination for Representative or Senator in the Congress of the United States at any primary election or nominating convention, or for endorsement or election at any general or special election held in connection with the nomination or election of a person to fill such office, whether or not such persons are actually nominated, indorsed, or elected. . .

No candidate for Representative in Congress or for Senator of the United States shall promise any office or position to any person, or to use his influence or to give his support to any person for any office or position for the purpose of procuring the support of such person, or of any person, in his candidacy; nor shall any candidate for Senator of the United States give, contribute, expend, use, or promise any money or thing of value to assist in procuring the nomination or election of any particular candidate for the legisla-

ture of the State in which he resides, but such candidate may, within the limitations and restrictions and subject to the requirements of this act, contribute to political committees having charge of the disbursement of campaign funds.

No candidate for Representative in Congress or for Senator of the United States shall give, contribute, expend, use, or promise, or cause to be given, contributed, expended, used, or promised, in procuring his nomination and election any sum, in the aggregate, in excess of the amount which he may lawfully give, contribute, expend, or promise under the laws of the state in which he resides: *Provided,* that no candidate for Representative in Congress shall give, contribute, expend, use, or promise any sum, in the aggregate, exceeding five thousand dollars in any campaign for his nomination and election, and no candidate for Senator of the United States shall give, contribute, expend, use, or promise any sum, in the aggregate, exceeding ten thousand dollars in any campaign for his nomination and election: *Provided further,* that money expended by any such candidate to meet and discharge any assessment, fee, or charge made or levied upon candidates by the laws of the state in which he resides, or for his necessary personal expenses, incurred for himself alone, for travel and subsistence, stationery and postage, writing or printing (other than in newspapers), and distributing letters, circulars, and posters, and for telegraph and telephone service, shall not be regarded as an expenditure within the meaning of this section, and shall not be considered any part of the sum herein fixed as the limit of expense, and need not be shown in the statements herein required to be filed.

The statements herein required to be made and filed before the general election, or the election by the legislature at which such candidate seeks election, need not contain items of which publicity is given in a previous statement, but the statement required to be made and filed after said general election by the legislature shall, in addition to an itemized statement of all expenses not theretofore given publicity, contain a summary of all proceeding statements."

Newberry v. United States

256 U.S. 232 (1921)

Until the early 20th century, the Supreme Court rarely adjudicated in cases concerning the scope of campaign finance laws, as there was no legislation on the issue that would be thought of as controversial. The situation changed when Congress began to regulate money in the federal election process, as the new provisions limited some aspects of the financial participation of various campaign actors. It was a matter of time before these laws would be challenged in the courts, and the first important Supreme Court decision on the constitutionality of federal campaign finance legislation was made in 1921, in *Newberry v. United States*.

In Michigan in 1918 Republican Truman H. Newberry won the U.S. Senate would primary against Henry Ford. According to official data disclosed by his campaign committee, Newberry spent much more money than was permitted by the Federal Corrupt Practices Act. The law provided for spending limits in federal election campaigns according to the regulations set by particular states, whereas funds used during Newberry's campaign exceeded the Michigan-established limits by about 100 times. After the District Court convicted Newberry, he decided to appeal to the Supreme Court, which found the provisions concerning spending limits unconstitutional. In the Court's view, issues regarding primaries and other nomination processes were not elections for office, and were thus beyond the scope of congressional regulation. Such an approach was changed in the early 1940s, when the Court overruled the *Newberry* holding in *United States v. Classic* (1941).

MR. JUSTICE McREYNOLDS delivered the opinion of the Court. . .

> If it be practically true that, under present conditions, a designated party candidate is necessary for an election – a preliminary thereto – nevertheless his selection is in no real sense part of the manner of holding the election. This does not depend upon the scheme by which candidates are put forward. Whether the candidate be offered through primary, or convention, or petition, or request of a few, or as the result of his own unsupported ambition does not directly affect the manner of holding the election. Birth must precede, but it is no part of, either funeral or apotheosis.
>
> Many things are prerequisites to elections or may affect their outcome – voters, education, means of transportation, health, public discussion, immigration, private animosities, even the face and figure of the candidate; but authority to regulate the manner of holding them

gives no right to control and of these. It is settled, *e.g.,* that the power to regulate interstate and foreign commerce does not reach whatever is essential thereto. Without agriculture, manufacture, mining, etc., commerce could not exist, but this fact does not suffice to subject them to the control of Congress. *Kidd v. Pearson*.

Elections of Senators by state legislatures presupposed selection of their members by the people, but it would hardly be argued that therefore Congress could regulate such selection. In the Constitutional Convention of 1787, when replying to the suggestion that state legislatures should have uncontrolled power over elections of members of Congress, Mr. Madison said: "It seems as improper in principle, though it might be less inconvenient in practice, to give to the state legislatures this great authority over the election of the representatives of the people in the general legislature as it would be to give to the latter a like power over the election of their representatives in the state legislatures."

We cannot conclude that authority to control party primaries or conventions for designating candidates was bestowed on Congress by the grant of power to regulate the manner of holding elections. The fair intendment of the words does not extend so far; the framers of the Constitution did not ascribe to them any such meaning. Nor is this control necessary in order to effectuate the power expressly granted. On the other hand, its exercise would interfere with purely domestic affairs of the state, and infringe upon liberties reserved to the people.

It should not be forgotten that, exercising inherent police power, the state may suppress whatever evils may be incident to primary or convention. As "each house shall be the judge of the elections, qualifications and returns of its own members," and as Congress may by law regulate the times, places, and manner of holding elections, the national government is not without power to protect itself against corruption, fraud, or other malign influences. . .

The Federal Corrupt Practices Act

43 Stat. 1070 (1925)

Apart from the growing influence of money in the electoral process, and increased criticism of the legislation, there was another, more political reason for a legislative initiative on the issue of campaign finance in the 1920s: the Teapot Dome scandal. The controversial lease of Navy petroleum reserves by government officials to businessmen became a subject of investigation, which revealed serious corrupt practices among high ranking political officers. Although the scandal did not directly refer to the issue of campaign finance, the investigation proved that large contributions were made by big business to politicians during non-election years. Therefore, after the *Newberry* precedent and Teapot Dome Scandal, Congress decided to act by passing another Federal Corrupt Practices Act.

The legislation was aimed at enhancing the enforcement of the campaign finance laws by granting more powers to Congress and imposing stricter regulation. It placed more restrictions on the size and character of campaign contributions, as well as on the disclosure of financial reports, which now had to be filed quarterly. Every donation of $100 or more, made in both election and non-election years, was now reportable. While the limits on how much candidates were able to spend in U.S. Senate elections were now raised, these regulations were confined to general elections, in accordance with the *Newberry* decision. As time showed, the 1925 law became the major legislation in the area of campaign finance for the next four decades, until early the 1970s and the enactment of the Federal Election Campaign Act.

Sec. 301. This title may be cited as the "Federal Corrupt Practices Act, 1925". . .

Sec. 303. (a) Every political committee shall have a chairman and a treasurer. No contribution shall be accepted, and no expenditure made, by or on behalf of a political committee for the purpose of influencing an election until such chairman and treasurer have been chosen.

(b) It shall be the duty of the treasurer of a political committee to keep a detailed and exact account of –

(1) All contributions made to or for such committee;

(2) The name and address of every person making any such contribution, and the date thereof;

(3) All expenditures made by or on behalf of such committee; and

(4) The name and address of every person to whom any such expenditure is made, and the date thereof.

(c) It shall be the duty of the treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure by or on behalf of a political committee exceeding $10 in amount. The treasurer shall preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of filing of the statement containing such items.

Sec. 304. Every person who receives a contribution for a political committee shall, on demand of the treasurer, and in any event within five days after the receipt of such contribution, render to the treasurer a detailed account thereof, including the name and address of the person making such contribution, and the date on which received. . .

Sec. 306. Every person (other than a political committee) who makes an expenditure in one or more items, other than by contribution to a political committee, aggregating $50 or more within a calendar year for the purpose of influencing in two or more States the election of candidates, shall file with the Clerk an itemized detailed statement of such expenditure in the same manner as required of the treasurer of a political committee by section 305. . .

Sec. 309. (a) A candidate, in his campaign for election, shall not make expenditures in excess of the amount which he may lawfully make under the laws of the State in which he is a candidate, nor in excess of the amount which he may lawfully make under the provisions of this title.

(b) Unless the laws of his State prescribe a less amount as the maximum limit of campaign expenditures, a candidate may make expenditures up to –

(1) The sum of $10,000 if a candidate for Senator, or the sum of $2,500 if a candidate for Representative, Delegate, or Resident Commissioner; or

(2) An amount equal to the amount obtained by multiplying three cents by the total number of votes cast at the last general election for all candidates for the office which the candidate seeks, but in no event exceeding $25,000 if a candidate for Senator or $5,000 if a candidate for Representative, Delegate, or Resident Commissioner. . .

Sec. 310. It is unlawful for any candidate to directly or indirectly promise or pledge the appointment, or the use of his influence or support for the appointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy.

Sec. 311. It is unlawful for any person to make or offer to make an expenditure, or to cause an expenditure to be made or offered, to any person, either to vote or withhold his vote, or to vote for or against any candidate, and it is unlawful for any person to solicit, accept, or receive any such expenditure in consideration of his vote or the withholding of his vote. . .

Sec. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make contribution in connection with any election to any political office, or for any corporation whatever to make a contribution in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or for any candidate, political committee, or other person to accept or receive any contribution prohibited in this section. Every corporation which makes any contribution in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation who consents to any contribution by the corporation in violation of this section shall be fined not more than $1,000, or imprisoned not more than one year, or both.

The Hatch Act

53 Stat. 1147 (1939)

The 1940 Amendment to the Hatch Act

54 Stat. 767 (1940)

The lack of new general campaign finance regulations between 1925 and 1971 did not mean that the issue was not present in political debates in Congress, as well as during presidential and congressional campaigns, which saw increased interest from various organizations contributing to particular candidates. In the 1930s, such interest occurred on the side of labor unions, which saw in the electoral process a proper way of influencing changes in government policies. This was especially visible during the implementation of New Deal programs, which were supported by members of various labor unions and organizations. As a part of the New Deal coalition, these suddenly became important contributors to federal campaigns for Congress and the White House. Furthermore, there were allegations that the Democratic Party used employees of the Works Progress Administration to pursue their political and electoral goals. All this led to the implementation in 1939 of the *Act to Prevent Pernicious Political Activities*, known as the Hatch Act, after its sponsor Senator Carl Hatch.

The authors of the law wanted to limit the political impact of those federal civil employees not restricted by the *Pendleton Act* and its extension. These individuals were now prohibited from contributing to all federal campaigns. The Act, however, did not control the flow of big money in federal campaigns. Therefore, a year after creating *The Hatch Act*, Congress decided to amend it by broadening the types of entities banned from contributing to presidential and congressional elections. It also introduced the first annual limits on individual donations in these elections. In practice, both laws limited the influence of political parties on the process of financing campaigns, which resulted in the growing impact of outside organizations on that process.

An Act to Prevent Pernicious Political Activities. . .

SEC. 5. It shall be unlawful for any person to solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any person known by him to be entitled to or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes.

SEC 6. It shall be unlawful for any person for political purposes to furnish or to disclose, or to aid or assist in furnishing or disclosing, any list or names of persons receiving compensation, employment, or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of, funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes. . .

SEC. 9. (a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects. For the purposes of this section the term "officer" or "employee" shall not be construed to include

(1) the President and Vice President of the United States;

(2) persons whose compensation is paid from the appropriation for the office of the President;

(3) heads and assistant heads of executive departments;

(4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

(b) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

*

An Act to extend to certain officers and employees in the several States and the District of Columbia the provisions of the Act entitled "An Act to prevent pernicious political activities," approved August 2, 1939. . .

The Act. . . is amended to read as follows:

"SEC. 13. (a) It is hereby declared to be a pernicious political activity, and it shall hereafter be unlawful, for any person, directly or indirectly, to make contributions in an aggregate amount in excess of $5,000 during any calendar year, or in connection with any campaign for nomination or election, to or on behalf of any candidate for an elective Federal office . . . or to or on behalf of any committee or other organization engaged in furthering, advancing or advocating the nomination or election of any candidate for any such office or the success of any national political party. . .

(b) For the purposes of this section –

(1) The term 'person' includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

(2) The term 'contribution' includes a gift, subscription, loan, advance, or deposit of money, or anything of value, and includes an contract, promise, or agreement, whether or not legally enforceable, to make a contribution". . .

The Act. . . is further amended by adding at the end thereof the following new section:

"SEC. 20. No political committee shall receive contributions aggregating more than $3,000,000, or make expenditures aggregating more than $3,000,000, during any calendar year. For the purposes of this section, any contributions received and any expenditures made on behalf of any political committee with the knowledge and consent of the chairman or treasurer of such committee shall be deemed to be received or made by such committee". . .

The Smith-Connally Act

57 Stat. 163 (1943)

The problem of the growing participation of labor unions and organizations in campaign activities did not disappear after the implementation of the *Hatch Act*. Additionally, several strikes organized by the labor movement proved an effective tool in making labor leaders important actors in the political process. In order to limit their political power, in 1943 Congress passed the *War Labor Disputes Act* (or *Smith-Connally Act*). It was adopted over the veto of President Franklin D. Roosevelt, whose New Deal policies were backed by the representatives of the labor unions.

According to the most important provision of the *Smith-Connally Act*, the president was granted the power to seize industrial war plants if organized strikes endangered the war industry. From the perspective of campaign finance restrictions, labor unions were prohibited from contributing to federal election campaigns in the same manner as the *Tillman Act* banned banks and corporations. But the effectiveness of the bill was only temporary – it expired after the end of World War II, leaving the regulation of the problem of campaign contributions by labor unions to the next Congress.

An Act relating to the use and operation by the United States of certain plants, mines, and facilities in the prosecution of war, and preventing strikes, lock-outs, and stoppages of production, and for other purposes. . .

SEC. 9. Section 313 of the Federal Corrupt Practices Act, 1925 is amended to read as follows: "SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make contribution in connection with any election to any political officer, or for any corporation whatever, or any labor organization to make a contribution in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' shall have the same meaning as under the National Labor Relations Act."

The Taft-Hartley Act

61 Stat. 136 (1947)

The Labor Management Relations Act (known as the *Taft-Hartley Act* after its sponsor, Senator Robert Taft), which amended the famous *National Labor Relations Act*, referred to campaign finance law in only small part. It was aimed mainly at regulating the operation of labor unions, which meant imposing several restrictions on their powers, such as defining the types of strikes, which were prohibited, determining relations between employer and labor unions, and allowing the employer to use free speech rights against so-called "unionization." In addition, however, the law permanently banned labor unions' contributions to federal campaigns, as well as covering any expenses on behalf of the party, campaign committee, or candidate, or directly influencing primary elections, caucuses, political conventions and general elections.

As a result, labor unions and civil rights organizations tried to challenge the Taft-Hartley Act in the courts, referring to the scope of the constitutional freedom of speech, but the judiciary did not answer these challenges in the affirmative. The only case which found part of the Act unconstitutional was *United States v. Brown* (1965), but the Court's holding did not refer to the issues of campaign finance.

An Act to amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes. . .

SEC. 304. Section 313 of the Federal Corrupt Practices Act, 1925, as amended, is amended to read as follows: "SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress to make contribution or expenditure in connection with any election or any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept

or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purpose of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or condition of work."

The Revenue Act

85 Stat. 497 (1971)

After a series of pieces of legislation concerning labor unions and their impact on political campaigns, a number of initiatives designed to reform campaign finance were brought up in Congress in the 1960s, with the most serious proposal coming from Louisiana Senator Russel B. Long. He pressed for new measures which would limit the amount of money pumped into federal campaigns, which would be essential in reducing the inequality stemming from the participation of rich donors in the electoral process. His argument rested on the concept of creating a system of public funding of elections, i.e. collecting subsidies for political parties which could be spent on political campaigns. He proposed establishing a special fund, called the Presidential Election Campaign Fund, financed from tax check-offs from federal taxes. Unfortunately for Long, his initiative did not survive strong opposition in Congress, and was defeated in 1967.

The concept of public funding through reform of the taxation system offered by Long remained one of the key ideas in the next Congress, which resulted in the passing of the Revenue Act of 1971, which was the first regulation to grant public subsidies to institutions and candidates involved in election campaigns. The Act created a system of voluntary tax check-offs for public funding programs, as well as minimum tax deductions for those who decided to give small contributions to candidates for federal offices. It established a system of public funding of presidential elections based on Long's Presidential Election Campaign Fund, and determined the circumstances of public and private contributions in these races. The issue of public funding was further reformed in 1974 when Congress adopted amendments to the Federal Election Campaign Act.

An Act to provide a job development investment credit, to reduce individual income taxes, to reduce certain excise taxes, and for other purposes. . .

SEC. 801. PRESIDENTIAL ELECTION CAMPAIGN FUND ACT

The Internal Revenue Code of 1954 is amended. . . CHAPTER 95—PRESIDENTIAL ELECTION CAMPAIGN FUND

For purposes of this chapter—

(1) The term 'authorized committee' means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Comptroller General. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

(2) The term 'candidate' means, with respect to any presidential election, an individual who (A) has been nominated for election to the office of President of the United States or the office of Vice President of the United States by a major party, or (B) has qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot) as the candidate of a political party for election to either such office in 10 or more States. For purposes of paragraphs (6) and (7) of this section and purposes of section 9004(a) (2), the term 'candidate' means, with respect to any preceding presidential election, an individual who received popular votes for the office of President in such election.

(3) The term 'Comptroller General' means the Comptroller General of the United States.

(4) The term 'eligible candidates' means the candidates of a political party for President and Vice President of the United States who have met all applicable conditions for eligibility to receive payments under this chapter set forth in section 9003.

(5) The term 'fund' means the Presidential Election Campaign Fund established by section 9006(a).

(6) The term 'major party' means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

(7) The term 'minor party' means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office.

(8) The term 'new party' means, with respect to any presidential election, a political party, which is neither a major party nor a minor party.

(9) The term 'political committee' means any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to Federal, State, or local elective public office.

(10) The term 'presidential election' means the election of presidential and vice-presidential electors.

(11) The term 'qualified campaign expense' means an expense—

(A) incurred by the candidate of a political party for the office of President to further his election to such office or to further the election of the candidate of such political party for the office of Vice President, or both (ii) by the candidate of a political party for the office of Vice President to further his election to such office or to further the election of the candidate of such political party for the office of President, or both, or (iii) by an authorized committee of the candidates of a political party for the offices of President and Vice President to further the election of either or both of such candidates to such offices,

(B) incurred within the expenditure report period (as defined in paragraph (12)), or incurred before the beginning of such period to the extent such expense is for property, services, or facilities used during such period, and

(C) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which such expense is incurred or paid.

An expense shall be considered as incurred by a candidate or an authorized committee if it is incurred by a person authorized by such candidate or such committee, as the case may be, to incur such expense on behalf of such candidate or such committee. If an authorized committee of the candidates of a political party for President and Vice President of the United States also incurs expenses to further the election of one or more other individuals to Federal, State, or local elective public office, expenses incurred by such committee which are not specifically to further the election of such other individual or individuals shall be considered as incurred to further the election of such candidates for President and Vice President in such proportion as the Comptroller General prescribes by rules or regulations.

(12) The term 'expenditure report period' with respect to any presidential election means—

(A) in the case of a major party, the period beginning with the first day of September before the election, or, if earlier, with the date on which such major party at its national convention nominated its candidate for election to the office of President of the United States, and ending 30 days after the date of the presidential election; and

(B) in the case of a party which is not a major party, the same period as the expenditure report period of the major party which has the shortest expenditure report period for such presidential election under subparagraph (A) .

SEC. 9003. CONDITION FOR ELIGIBILITY FOR PAYMENTS

(a) IN GENERAL—In order to be eligible to receive any payments under section 9006, the candidates of a political party in a presidential election shall, in writing—

(1) agree to obtain and furnish to the Comptroller General such evidence as he may request of the qualified campaign expenses with respect to which payment is sought,

(2) agree to keep and furnish to the Comptroller General such records, books, and other information as he may request,

(3) agree to an audit and examination by the Comptroller General under section 9007 and to pay any amounts required to be paid under such section, and

(4) agree to furnish statements of qualified campaign expenses and proposed qualified campaign expenses required under section 9008.

(b) MAJOR PARTIES—In order to be eligible to receive any payments under section 9006, the candidates of a major party in a presidential election shall certify to the Comptroller General, under penalty of perjury, that—

(1) such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under section 9004, and

(2) no contributions to defray qualified campaign expenses have been or will be accepted by such candidates or any of their authorized committees except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 9006(c), and no contributions to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 9002(11) have been or will be accepted by such candidates or any of their authorized committees. Such certification shall be made within such time prior to the day of the presidential election as the Comptroller General shall prescribe by rules or regulations.

(c) MINOR AND NEW PARTIES—In order to be eligible to receive any payments under section 9006, the candidates of a minor or new party in a presidential election shall certify to the Comptroller General, under penalty of perjury, that—

(1) such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under section 9004, and

(2) such candidates and their authorized committees will accept and expend or retain contributions to defray qualified campaign expenses only to the extent that the qualified campaign expenses incurred by such candidates and their authorized committees certified to under paragraph (1) exceed the aggregate payments received by such candidates out of the fund pursuant to section 9006.

Such certification shall be made within such time prior to the day of the presidential election as the Comptroller General shall prescribe by rules or regulations.

SEC. 9004. ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS

(a) IN GENERAL—Subject to the provisions of this Chapter—

(1) The eligible candidates of a major party in a presidential election shall be entitled to payments under section 9006 equal in the aggregate to 15 cents multiplied by the total number of residents within the United States who have attained the age of 18, as determined by the Bureau of the Census, as of the first day of June of the year preceding the year of the presidential election.

(2) (A) The eligible candidates of a minor party in a presidential election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount computed under paragraph (1) for a major party as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding presidential election bears to the average number of popular votes received by the candidates for President of the major parties in the preceding presidential election.

(B) If the candidate of one or more political parties (not including a major party) for the office of President was a candidate for such office in the preceding presidential election and received 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office, such candidate and his running mate for the office of Vice President, upon compliance with the provisions of section 9003 (a) and (c), shall be treated as eligible candidates entitled to payments under section 9006 in an amount computed as provided in subparagraph by taking into account all the popular votes received by such candidate for the office of President in the preceding presidential election. If eligible candidates of a minor party are entitled to payments under this subparagraph such entitlement shall be reduced by the amount of the entitlement allowed under subparagraph (A).

(3) The eligible candidates of a minor party or a new party in a presidential election whose candidate for President in such election receives, as such candidate, 5 percent or more of the total number of popular votes cast for the office of President in such election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount computed under paragraph (1) for a major party as the number of popular votes received by such candidate in such election bears to the average number of popular votes received in such election by the candidates for President of the major parties. In the case of eligible candidates entitled to payments under paragraph (2), the amount allowable under this paragraph shall be limited to the amount, if any, by which the entitlement under the preceding sentence exceeds the amount of the entitlement under paragraph

(2)(b) LIMITATIONS—The aggregate payments to which the eligible candidates of a political party shall be entitled under subsections (a) (2) and (3) with respect to a presidential election shall not exceed an amount equal to the lower of—

(1) the amount of qualified campaign expenses incurred by such eligible candidates and their authorized committees, reduced by the amount of contributions to defray qualified campaign expenses received and expended or retained by such eligible candidates and such committees, or

(2) the aggregate payments to which the eligible candidates of a major party are entitled under subsection (a) (1), reduced by the amount of contributions described in paragraph (1) of this subsection.

(c) RESTRICTIONS—The eligible candidates of a political party .shall be entitled to payments under subsection (a) only—

(1) to defray qualified campaign expenses incurred by such eligible candidates or their authorized committees, or

(2) to repay loans the proceeds of which were used to defray such qualified campaign expenses, or otherwise to restore funds (other than contributions to defray qualified campaign expenses received and expended by such candidates or such committees) used to defray such qualified campaign expenses.

SEC. 9005. CERTIFICATION BY COMPTROLLER GENERAL

(a) INITIAL CERTIFICATIONS—On the basis of the evidence, books, records, and information furnished by the eligible candidates of a political party and prior to examination and audit under section 9007, the Comptroller General shall certify from time to time to the Secretary for payment to such candidates under section 9006 the payments to which such candidates are entitled under section 9004.

(b) FINALITY OF CERTIFICATIONS AND DETERMINATIONS—Initial certifications by the Comptroller General under subsection (a), and all determinations made by him under this chapter, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Comptroller General under section 9007 and judicial review under section 9011.

SEC. 9006. PAYMENTS TO ELIGIBLE CANDIDATES

(a) ESTABLISHMENT OF CAMPAIGN FUND—There is hereby established on the books of the Treasury of the United States a special fund to be known as the 'Presidential Election Campaign Fund'. The Secretary shall maintain in the fund (1) a separate account for the candidates of each major party, each minor party, and each new party for which a specific designation is made under section 6096 for payment into an account in the fund and (2) a general account for which no specific designation is made. The Secretary shall, as provided by appropriation Acts, transfer to each account in the fund an amount not in excess of the sum of the amounts designated (subsequent to the previous presidential election) to such account by individuals under section 6096 for payment into such account of the fund.

(b) TRANSFER TO THE GENERAL FUND—If, after a presidential election and after all eligible candidates have been paid the amount which they are entitled to receive under this chapter, there are moneys remaining in any account in the fund, the Secretary shall transfer the moneys so remaining to the general fund of the Treasury.

(c) PAYMENTS FROM THE FUND—Upon receipt of a certification from the Comptroller General under section 9005 for payment to the eligible candidates of a political party, the Secretary shall pay to such candidates out of the specific account in the fund for such

candidates the amount certified by the Comptroller General. Payments to eligible candidates from the account designated for them shall be limited to the amounts in such account at the time of payment. Amounts paid to any such candidates shall be under the control of such candidates.

(d) TRANSFERS FROM GENERAL ACCOUNT TO SEPARATE ACCOUNTS—

(1) If, on the 60th day prior to the presidential election, the moneys in any separate account in *the* fund are less than the aggregate entitlement under section 9004(a)(1) or (2) of the eligible candidates to which such account relates, 80 percent of the amount in the general account shall be transferred to the separate accounts (whether or not all the candidates to which such separate accounts relate are eligible candidates) in the ratio of the entitlement under section 9004(a) (1) or (2) of the candidates to which such accounts relate. No amount shall be transferred to any separate account under the preceding sentence which, when added to the moneys in that separate account prior to any payment out of that account during the calendar year, would be in excess of the aggregate entitlement under section 9004(a) (1) or (2) of the candidates to whom such account relates.

(2) If, at the close of the expenditure report period, the moneys in any separate account in the fund are not sufficient to satisfy any unpaid entitlement of the eligible candidates to which such account relates, the balance in the general account shall be transferred to the separate accounts in the following manner:

(A) For the separate account of the candidates of a major party, compute the percentage which the average number of popular votes received by the candidates for President of the major parties is of the total number of popular votes cast for the office of President in the election.

(B) For the separate account of the candidates of a minor or new party, compute the percentage which the popular votes received for President by the candidate to which such account relates is of the total number of popular votes cast for the office of President in the election.

(C) In the case of each separate account, multiply the applicable percentage obtained under subparagraph (A) or (B) for such account by the amount of the money in the general account prior to any distribution made under paragraph (1), and transfer to such separate account an amount equal to the excess of the product of such multiplication over the amount of any distribution made under such paragraph to such account.

The Federal Election Campaign Act of 1971

86 Stat. 3 (1972)

The Revenue Act was not the most important legislation of 1971 regarding campaign finance reform. From the late 1960s Congress had been preparing a thorough reform of the system, and the scandals of Bobby Baker and Thomas Dodd involving financial issues, as well as the increasing amount of money spent by candidates in every presidential election, only confirmed the necessity of the reform. The ineffectiveness of the earlier regulations, and the financial situation of the Democratic Party after the 1968 election cycle during which it generated huge debt, sped up the decision of the legislators to announce the largest campaign finance bill up to that point.

The Federal Election Campaign Act of 1971 (FECA), signed into law by President Richard Nixon in early 1972, addressed various issues referring to the proper conduct of election campaigns on the federal level of government. Its major provisions concerned two types of limits, which were set for the amount of contributions and the amount of spending for media advertising, depending on the type of election, the contributing entity, and the character of the contribution. For instance, for media campaigns candidates were now able to spend as much as 10 cents per voter of the eligible voting population. FECA also limited the amounts candidates and their immediate families could themselves contribute to their electoral efforts. The law provided for a more complex system of quarterly public disclosure of receipts and expenditures. It now required the inclusion of every expense of $100 or more, and on the donation side it asked for every receipt of $100 or more, including the donor's name, address, and occupation. The imposition of these restrictions was problematic, because in order to assure the enforcement of the laws, the Act gave the control over the disclosure system to various federal entities. House candidates were obliged to report to the Clerk of the House, Senate hopefuls to the Secretary of the Senate, and presidential candidates to the U.S. General Accounting Office (today the Government Accountability Office). In addition, candidates and campaign committees had to report to the appropriate secretary of state, depending on where the campaign funds were spent. It did not take long for this to prove ineffective. Although amended several times, the Federal Election Campaign Act, along with the Revenue Act of 1971, became a landmark piece of campaign finance regulation, consolidating the rules governing former pieces of legislation and

establishing a new approach to contributions and spending in election campaigns. It is today regarded as the main source of the evolution of political action committees (PACs), which are a significant part of the electoral process in the United States.

An Act to promote fair practices in the conduct of election campaigns for Federal political offices, and for other purposes. . .

SEC. 104. (a) (1) Subject to paragraph (4), no legally qualified candidate in an election (other than a primary or primary runoff election) for Federal elective office may—

(A) spend for the use of communications media on behalf of his candidacy in such election a total amount in excess of the greater of (i) 10 cents multiplied by the voting age population (as certified under paragraph (5)) of the geographical area in which the election for such office is held, or (ii) $50,000, or (B) spend for the use of broadcast stations on behalf of his candidacy in such election a total amount in excess of 60 per centum of the amount determined under subparagraph (A) with respect to such election.

(2) No legally qualified candidate in a primary election for nomination to a Federal elective office, other than President, may spend (A) for the use of communications media, or (B) for the use of broadcast stations, on behalf of his candidacy in such election a total amount in excess of the amounts determined under paragraph (1) (A) or (B), respectively, with respect to the general election for such office. For purposes of this subsection a primary runoff election shall be treated as a separate primary election.

(3) (A) No person who is a candidate for presidential nomination may spend (i) for the use in a State of communications media, or (ii) for the use in a State of broadcast stations, on behalf of his candidacy for presidential nomination a total amount in excess of the amounts which would have been determined under paragraph (1) (A) or (B), respectively, had he been a candidate for election for the office of Senator from such State (or for the office of Delegate or Resident Commissioner in the case of the District of Columbia or the Commonwealth of Puerto Rico).

(B) For purposes of this paragraph (3), a person is a candidate for presidential nomination if he makes (or any other person makes on his behalf) an expenditure for the use of any communications medium on behalf of his candidacy for any political party's nomination for election to the office of President. He shall be considered to be such a candidate during the period (i) beginning on the date on which he (or such other person) first makes such an expenditure (or, if later, January 1 of the year in which the election for the office of President is held), and (ii) ending on the date on which such political party nominates a candidate for the office of President. For purposes of this title and of section 315 of the Communications Act of 1934, a candidate for presidential nomination shall be considered a legally qualified candidate for public office.

(C) The Comptroller General shall prescribe regulations under which any expenditure by a candidate for presidential nomination for the use in two or more States of a communications medium shall be attributed to such candidate's expenditure limitation in each such State, based on the number of persons in such State who can reasonably be expected to be reached by such communications medium. . .

SEC. 203. Section 608 of title 18, United States Code, is amended to read as follows:

§ 608. Limitations on contributions and expenditures

(a) (1) No candidate may make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election,

or election, to Federal office in excess of (A) $50,000, in the case of a candidate for the office of President or Vice President; (B) $35,000, in the case of a candidate for the office of Senator; or (C) $25,000, in the case of a candidate for the office of Representative, or Delegate or Resident Commissioner to the Congress.

(2) For purposes of this subsection, 'immediate family' means a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons. (b) No candidate or political committee shall knowingly accept any contribution or authorize any expenditure in violation of the provisions of this section. (c) Violation of the provisions of this section is punishable by a fine not to exceed $1,000, imprisonment for not to exceed one year, or both. . .

SEC. 205. Section 610 of title 18, United States Code, relating to contributions or expenditures by national banks, corporations, or labor organizations, is amended by adding at the end thereof the following paragraph:

As used in this section, the phrase 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign commit- tee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: *Provided*, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or any- thing of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.

SEC. 206. Section 611 of title 18, United States Code, is amended to read as follows:

§ 611. Contributions by Government contractors: Whoever— (a) entering into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for and the later of (1) the completion of performance under, or (2) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land or buildings, directly or indirectly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, to any political party, committee, or candidate for public office or to any person for any political purpose or use; or (b) knowingly solicits any such contribution from any such person for any such purpose during any such period; shall be fined not more than $5,000 or imprisoned not more than five years, or both. . .

TITLE III—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS DEFINITIONS

SEC. 301. When used in this title—

(a) "election" means (1) a general, special, primary, or runoff election, (2) a convention or caucus of a political party held to nominate a candidate, (3) a primary election held for

the selection of delegates to a national nominating convention of a political party, (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (5) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

(b) "candidate" means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(c) "Federal office" means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

(d) "political committee" means any committee, association, or organization which accepts contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000;

(e) "contribution" means— (1) a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to Federal office or as a presidential or vice-presidential elector, or for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States; (2) a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose; (3) a transfer of funds between political committees; (4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee without charge for any such purpose; and (5) notwithstanding the foregoing meanings of "contribution", the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee;

(f) "expenditure" means— (1) a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to Federal office, or as a presidential and vice-presidential elector, or for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States; (2) a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure, and (3) a transfer of funds between political committees;

(g) "supervisory officer" means the Secretary of the Senate with respect to candidates for Senator; the Clerk of the House of Representatives with respect to candidates for Representative in, or Delegate or Resident Commissioner to, the Congress of the United States; and the Comptroller General of the United States in any other case;

(h) "person" means an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons; and

(i) "State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

ORGANIZATION OF POLITICAL COMMITTEES

SEC. 302. (a) Every political committee shall have a chairman and a treasurer. No contribution and no expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of chairman or treasurer thereof. No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.

(b) Every person who receives a contribution in excess of $10 for a political committee shall, on demand of the treasurer, and in any event within five days after receipt of such contribution, render to the treasurer a detailed account thereof, including the amount, the name and address (occupation and the principal place of business, if any) of the person making such contribution, and the date on which received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(c) It shall be the duty of the treasurer of a political committee to Recordkeeping. keep a detailed and exact account of— (1) all contributions made to or for such committee; (2) the full name and mailing address (occupation and the principal place of business, if any) of every person making a contribution in excess of $10, and the date and amount thereof; (3) all expenditures made by or on behalf of such committee; and (4) the full name and mailing address (occupation and the principal place of business, if any) of every person to whom any expenditure is made, the date and amount thereof and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.

(d) It shall be the duty of the treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure made by or on behalf of a political committee in excess of $100 in amount, and for any such expenditure in a lesser amount, if the aggregate amount of such expenditures to the same person during a calendar year exceeds $100. *The* treasurer shall preserve all receipted bills and accounts required to be kept by this section for periods of time to be determined by the supervisory officer.

(e) Any political committee which solicits or receives contributions or makes expenditures on behalf of any candidate that is not authorized in writing by such candidate to do so shall include a notice on the face or front page of all literature and advertisements published in connection with such candidate's campaign by such committee or on its behalf stating that the committee is not authorized by such candidate and that such candidate is not responsible for the activities of such committee. . .

REGISTRATION OF POLITICAL COMMITTEES; STATEMENTS

SEC. 303. (a) Each political committee which anticipates receiving contributions or making expenditures during the calendar year in an aggregate amount exceeding $1,000 shall file with the supervisory officer a statement of organization, within ten days after its organization or, if later, ten days after the date on which it has information which causes the committee to anticipate it will receive contributions or make expenditures in excess of $1,000. Each such committee in existence at the date of enactment of this Act shall file a statement of organization with the supervisory officer at such time as he prescribes.

(b) The statement of organization shall include— (1) the name and address of the committee; (2) the names, addresses, and relationships of affiliated or connected organizations; (3) the area, scope, or jurisdiction of the committee; (4) the name, address, and position of the custodian of books and accounts; (5) the name, address, and position of other principal officers, including officers and members of the finance committee, if any; (6) the name, address, office sought, and party affiliation of (A) each candidate whom the committee is supporting, and (B) any other individual, if any, whom the committee is

supporting for nomination for election, or election, to any public office whatever; or, if the committee is supporting the entire ticket of any party, the name of the party; (7) a statement whether the committee is a continuing one; (8) the disposition of residual funds which will be made in the event of dissolution; (9) a listing of all banks, safety deposit boxes, or other repositories used; (10) a statement of the reports required to be filed by the committee with State or local officers, and, if so, the names, addresses, and positions of such persons; and (11) such other information as shall be required by the supervisory officer.

(c) Any change in information previously submitted in a statement of organization shall be reported to the supervisory officer within a ten-day period following the change.

(d) Any committee which, after having filed one or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year in an aggregate amount exceeding $1,000 shall so notify the supervisory officer.

REPORTS BY POLITICAL COMMITTEES AND CANDIDATES

SEC. 304. (a) Each treasurer of a political committee supporting a candidate or candidates for election to Federal office, and each candidate for election to such office, shall file with the appropriate supervisory officer reports of receipts and expenditures on forms to be prescribed or approved by him. Such reports shall be filed on the tenth day of March, June, and September, in each year, and on the fifteenth and fifth days next preceding the date on which an election is held. Completion date, and also by the thirty-first day of January. Such reports shall be complete as of such date as the supervisory officer may prescribe, which shall not be less than five days before the date of filing, except that any contribution of $5,000 or more received after the last report is filed prior to the election shall be reported within forty-eight hours after its receipt. . .

REPORTS BY OTHERS THAX POLITICAL COMMITTEES

SEC. 305. Every person (other than a political committee or candidate) who makes contributions or expenditures, other than by contribution to a political committee or candidate, in an aggregate amount in excess of $100 within a calendar year shall file with the supervisory officer a statement containing the information required by section 304. Statements required by this section shall be filed on the dates on which reports by political committees are filed, but need not be cumulative. . .

The Federal Election Campaign Act Amendments of 1974

88 Stat. 1263 (1974)

The limited success of the authors of the FECA, stemming from the ineffectiveness of its various provisions, mainly those referring to the public disclosure of financial documents from election campaigns, stimulated legislators to search for a quick revision of the document and insert necessary amendments. Such an approach was especially characteristic after the lack of pre-election disclosure of expenditures by President Richard Nixon in the 1972 campaign, when the public found out that the Republican candidate collected more than $11 million from various sources. Apart from the disclosure failure, even more decisive for congressional action was the outbreak of the Watergate scandal, which revealed the illegal activities of the Committee to Re-Elect the President, putting the whole problem of money and politics at the center of social concern.

The authors of the amendment opted for strengthening the disclosure system, furthering limits to campaign contributions and spending, and creating a comprehensive system of public funding for presidential elections, based on the earlier provisions of the 1971 laws. The most significant aspect of the 1974 legislation, however, was the creation of an independent administrative agency, the Federal Election Commission (FEC), which would be responsible for administering and enforcing campaign finance laws, including oversight of the presidential election public fund. Prior to this the system had lacked such an institution; this was one of the major reasons for its ineffectiveness. Therefore, the creation of the Commission was aimed at enhancing the disclosure procedures, implementing further regulations on campaign finance, and investigating alleged violations of the laws concerning campaign finance by both contributors and candidates. Another important innovation was a limit on so-called *independent expenditures*. These were all the expenses made on behalf of the candidates by the political parties or the outside groups without the coordination with them, their campaign committees or political parties. Before the new law took effect, however, it was challenged in court, leading to the milestone Supreme Court decision on the scope of campaign finance regulations, *Buckley v. Valeo*.

An Act to impose overall limitations on campaign expenditures and political contributions; to provide that each candidate for Federal office shall designate a principal campaign committee; to provide for a single reporting responsibility with respect to receipts and expenditures by certain political committees; to change the times for the filing of reports regarding campaign expenditures and political contributions; to provide for public financing of Presidential nominating conventions and Presidential primary elections; and for other purposes. . .

SEC. 310 (a) (1) There is established a commission to be known as the Federal Election Commission. The Commission is composed of the Secretary of the Senate and the Clerk of the House of Representatives, ex officio and without the right to vote, and 6 members appointed as follows: (A) 2 shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President pro tempore of the Senate upon the recommendations of the majority leader of the Senate and the minority leader of the Senate; (B) 2 shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the Speaker of the House of Representatives, upon the recommendations of the majority leader of the House and the minority leader of the House; and (C) 2 shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President of the United States. A member appointed under subparagraph (A), (B), or (C) shall not be affiliated with the same political party as the other member appointed under such paragraph.

(2) Members of the Commission shall serve for terms of 6 years, except that of the members first appointed—(A) one of the members appointed under paragraph (1) (A) shall be appointed for a term ending on the April 30 first occur- ring more than 6 months after the date on which he is appointed; (B) one of the members appointed under paragraph (1) (B) shall be appointed for a term ending 1 year after the April 30 on which the term of the member referred to in subparagraph (A) of this paragraph ends; (C) one of the members appointed under paragraph (1) (C) shall be appointed for a term ending 2 years thereafter; (D) one of the members appointed under paragraph (1) (A) shall be appointed for a term ending 3 years thereafter; (E) one of the members appointed under paragraph (1) (B) shall be appointed for a term ending 4 years thereafter; and (F) one of the members appointed under paragraph (1) (C) shall be appointed for a term ending 5 years thereafter. An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacancy occurring in the member- ship of the Commission shall be filled in the same manner as in the case of the original appointment.

(3) Members shall be chosen on the basis of their maturity, experience, integrity, impartiality, and good judgment and shall be chosen from among individuals who, at the time of their appointment, are not elected or appointed officers or employees in the executive, legislative, or judicial branch of the Government of the United States.

(4) Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall receive compensation equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. 5315).

(5) The Commission shall elect a chairman and a vice chairman from among its members (other than the Secretary of the Senate and the Clerk of the House of Representatives) for a term of one year. No member may serve as chairman more often than once during any term of office to which he is appointed. The chairman and the vice chairman shall

not be affiliated with the same political party. The vice chairman shall act as chairman in the absence or disability of the chairman, or in the event of a vacancy in such office.

(b) The Commission shall administer, seek to obtain compliance with, and formulate policy with respect to this Act and sections 608, 610, 611, 613, 614, 615, 616, and 617 of title 18, United States Code. The Commission has primary jurisdiction with respect to the civil enforcement of such provisions.

(c) All decisions of the Commission with respect to the exercise of its duties and powers under the provisions of this title shall be made by a majority vote of the members of the Commission. A member of the Commission may not delegate to any person his vote or any decision-making authority or duty vested in the Commission by the provisions of this title.

(d) The Commission shall meet at least once each month and also at the call of any member.

(e) The Commission shall prepare written rules for the conduct of its activities, shall have an official seal which shall be judicially noticed, and shall have its principal office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States). . .

SEC. 311. (a) The Commission has the power— (1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such a reasonable period of time and under oath or otherwise as the Commission may determine; (2) to administer oaths or affirmations; (3) to require by subpoena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties; (4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection; (5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States; (6) to initiate (through civil proceedings for injunctive, declaratory, or other appropriate relief), defend, or appeal any civil action in the name of the Commission for the purpose of enforcing the provisions of this Act, through its general counsel; (7) to render advisory opinions under section 313; (8) to make, amend, and repeal such rules, pursuant to the provisions of chapter 5 of title 5, United States Code, as are necessary to carry out the provisions of this Act; (9) to formulate general policy with respect to the administration of this Act and sections 608, 610, 611, 613, 614, 615, 616,and 617 of title 18, United States Code; (10) to develop prescribed forms under section 311(a)(1); and (11) to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities.

(b) Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission, in case of refusal to obey a subpoena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance therewith. Any failure to obey the order of the court may be punished by the court as contempt thereof.

(c) No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information a t the request of the Commission.

(d) (1) Whenever the Commission submits any budget estimate or request to the President of the United States or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress. (2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation, requested by the Congress or by any Member of the Congress, to the President of the United States or the Office of Management and Budget, it shall concurrently transmit

a copy thereof to the Congress or to the Member requesting the same. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, to any office or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

SEC. 312. The Commission shall transmit reports to the President of the United States and to each House of the Congress no later than March 31 of each year. Each such report shall contain a detailed statement with respect to the activities of the Commission in carrying out its duties under this title, together with recommendations for such legislative or other action as the Commission considers appropriate.

SEC. 313. (a) Upon written request to the Commission by any individual holding Federal office, any candidate for Federal office, or any political committee, the Commission shall render an advisory opinion, in writing, within a reasonable time with respect to whether any specific transaction or activity by such individual, candidate, or political committee would constitute a violation of this Act, of chapter 95 or chapter 96 of the Internal Revenue Code of 1954, or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code.

(b) Notwithstanding any other provision of law, any person with respect to whom an advisory opinion is rendered under subsection (a) who acts in good faith in accordance with the provisions and findings of such advisory opinion shall be presumed to be in compliance with the provision of this Act, of chapter 95 or chapter 96 of the Internal Revenue Code of 1954, or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code, with respect to which such advisory opinion is rendered.

(c) Any request made under subsection (a) shall be made public by the Commission. The Commission shall, before rendering an advisory opinion with respect to such request, provide any interested party with an opportunity to transmit written comments to the Com- mission with respect to such request.

Buckley v. Valeo

424 U.S. 1 (1976)

Almost no other case has had such a significant impact on the constitutional meaning of campaign finance laws as *Buckley v. Valeo*. Analysts of the issue often divide the history of money in the federal electoral process into the pre-*Buckley* and post-*Buckley* eras, demonstrating that the 1976 Supreme Court decision introduced a new understanding of the regulation of campaign finance. Opponents of the FECA and its amendment argued that some limits on campaign donations and expenses severely violated the Constitution, as they endangered the First Amendment rights to freedom of speech and association. The First Amendment's clause referring to the right to express oneself, the right to decide about the amount of money spent in a campaign by the candidate, and the right to information concerning the candidates, led to the very original conclusion reached by the majority of Justices that "money talks," and that, therefore, the process of spending money in electoral campaigns is a type of expression called political speech.

The lawsuit was filed by conservative Senator James Buckley against a former member of Federal Election Commission, Francis Valeo, who represented the U.S. government. When the District Court and Court of Appeals decided against Buckley, he appealed to the Supreme Court, which granted review. The main issue in the case referred to the constitutionality of the provisions of the 1971 and 1974 legislation, which imposed expenditure limits on candidates in federal campaigns, but the Court, in a *per curiam* opinion, determined not only the status of campaign spending but also of individual and group contributions to candidates. On the one hand, the Justices upheld contribution limits, explaining their important anti-corruption role, but on the other they found expenditure limits to be in contradiction to freedom of speech and expression. In other words, the American government, having an interest in fighting corruption, had a compelling state interest to impose limitations on contributions, but not on campaign spending. Moreover, several passages of the *Buckley* decision seem to contradict each other. For instance, if presidential candidates applied to use the public fund, the expenditure limit would be constitutional. But if they chose to reject it, they were free to spend as much as they wished. Provided they were not coordinated with the candidate or any campaign committee, the Court struck down the independent expenditures limits, contributing to the growing influence of outside spending. One of the most important provisions introduced in *Buckley* was a test that would distinguish between kinds of advocacy presented in an election communication. If the communication – e.g. media advertisement – included the words 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote

against,' 'defeat,' or 'reject,' it would indicate express advocacy for a candidate. Only this kind of speech, express advocacy, could be regulated by Congress. In contrast, issue advocacy was declared to be a communication not containing the above words and, as it was raised in order to discuss public policy problems, was beyond congressional reach as provided for in FECA. The Court also determined the constitutionality of the Federal Election Commission, advising that a new way of appointing its members be found. The rule whereby the Speaker of the House and president *pro tempore* of the Senate each had a right to make two each appointments to the executive branch was ruled as violating the constitutional principle of separation of powers.

While several of the above rules were soon either repealed or amended by the new legislation or FEC advisory opinions, by linking political contributing with free speech rights the *Buckley* precedent opened the door for the loosening of campaign finance regulations in the Roberts' Court era.

PER CURIAM. . .

> The constitutional power of Congress to regulate federal elections is well established and is not questioned by any of the parties in this case. Thus, the critical constitutional questions presented here go not to the basic power of Congress to legislate in this area, but to whether the specific legislation that Congress has enacted interferes with First Amendment freedoms or invidiously discriminates against non-incumbent candidates and minor parties in contravention of the Fifth Amendment. . .
>
> The Act's contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*. Although First Amendment protections are not confined to "the exposition of ideas," *Winters v. New York,* there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs, of course including discussions of candidates, *Mills v. Alabama*. This no more than reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," *New York Times Co. v. Sullivan*. In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation. As the Court observed in *Monitor Patriot Co. v. Roy,* it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office.
>
> The First Amendment protects political association as well as political expression. The constitutional right of association explicated in *NAACP v. Alabama*, stemmed from the Court's recognition that [e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association. Subsequent decisions have made clear that the First and Fourteenth Amendments guarantee "freedom to associate with others for the common advancement of political beliefs and ideas," a freedom that encompasses "[t]he right to associate with the political party of one's choice." *Kusper v. Pontikes*, quoted in *Cousins v. Wigoda.*

It is with these principles in mind that we consider the primary contentions of the parties with respect to the Act's limitations upon the giving and spending of money in political campaigns. Those conflicting contentions could not more sharply define the basic issues before us. Appellees contend that what the Act regulates is conduct, and that its effect on speech and association is incidental, at most. Appellants respond that contributions and expenditures are at the very core of political speech, and that the Act's limitations thus constitute restraints on First Amendment liberty that are both gross and direct. . .

In upholding the constitutional validity of the Act's contribution and expenditure provisions on the ground that those provisions should be viewed as regulating conduct, not speech, the Court of Appeals relied upon *United States v. O'Brien*. The *O'Brien* case involved a defendant's claim that the First Amendment prohibited his prosecution for burning his draft card because his act was "symbolic speech" engaged in as a "demonstration against the war and against the draft." On the assumption that "the alleged communicative element in O'Brien's conduct [was] sufficient to bring into play the First Amendment," the Court sustained the conviction because it found "a sufficiently important governmental interest in regulating the non-speech element" that was "unrelated to the suppression of free expression" and that had an "incidental restriction on alleged First Amendment freedoms. . . no greater than [was] essential to the furtherance of that interest." The Court expressly emphasized that *O'Brien* was not a case where the alleged governmental interest in regulating conduct arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful.

We cannot share the view that the present Act's contribution and expenditure limitations are comparable to the restrictions on conduct upheld in *O'Brien.* The expenditure of money simply cannot be equated with such conduct as destruction of a draft card. Some forms of communication made possible by the giving and spending of money involve speech alone, some involve conduct primarily, and some involve a combination of the two. Yet this Court has never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a non-speech element or to reduce the exacting scrutiny required by the First Amendment. *See Bigelow v. Virginia, New York Times Co. v. Sullivan*. For example, in *Cox v. Louisiana,* the Court contrasted picketing and parading with a newspaper comment and a telegram by a citizen to a public official. The parading and picketing activities were said to constitute conduct "intertwined with expression and association," whereas the newspaper comment and the telegram were described as a "pure form of expression" involving "free speech alone," rather than "expression mixed with particular conduct."

Even if the categorization of the expenditure of money as conduct were accepted, the limitations challenged here would not meet the *O'Brien* test because the governmental interests advanced in support of the Act involve "suppressing communication." The interests served by the Act include restricting the voices of people and interest groups who have money to spend and reducing the over-all scope of federal election campaigns. Although the Act does not focus on the ideas expressed by persons or groups subject to its regulations, it is aimed, in part, at equalizing the relative ability of all voters to affect electoral outcomes by placing a ceiling on expenditures for political expression by citizens and groups. Unlike *O'Brien,* where the Selective Service System's administrative interest in the preservation of draft cards was wholly unrelated to their use as a means of communication, it is beyond dispute that the interest in regulating the alleged "conduct" of giving or spending money "arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful". . .

A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies

generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech. . .

Given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy. There is no indication, however, that the contribution limitations imposed by the Act would have any dramatic adverse effect on the funding of campaigns and political associations. The over-all effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression.

The Act's contribution and expenditure limitations also impinge on protected associational freedoms. Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals. The Act's contribution ceilings thus limit one important means of associating with a candidate or committee, but leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates. And the Act's contribution limitations permit associations and candidates to aggregate large sums of money to promote effective advocacy. By contrast, the Act's $1,000 limitation on independent expenditures "relative to a clearly identified candidate" precludes most associations from effectively amplifying the voice of their adherents, the original basis for the recognition of First Amendment protection of the freedom of association. *See NAACP v. Alabama*. . .

In sum, although the Act's contribution and expenditure limitations both implicate fundamental First Amendment interests, its expenditure ceilings impose significantly more severe restrictions on protected freedoms of political expression and association than do its limitations on financial contributions. . .

It is unnecessary to look beyond the Act's primary purpose – to limit the actuality and appearance of corruption resulting from large individual financial contributions – in order to find a constitutionally sufficient justification for the $1,000 contribution limitation. Under a system of private financing of elections, a candidate lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign. The increasing importance of the communications media and sophisticated mass-mailing and polling operations to effective campaigning make the raising of large sums of money an ever more essential ingredient of an effective candidacy. To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined. Although the scope of such pernicious practices can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one. . .

The Act's $1,000 contribution limitation focuses precisely on the problem of large campaign contributions – the narrow aspect of political association where the actuality and potential for corruption have been identified – while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources. Significantly, the Act's contribution limitations in themselves do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties.

We find that, under the rigorous standard of review established by our prior decisions, the weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect upon First Amendment freedoms caused by the $1,000 contribution ceiling. . .

There is no such evidence to support the claim that the contribution limitations in themselves discriminate against major party challengers to incumbents. Challengers can and often do defeat incumbents in federal elections. Major party challengers in federal elections are usually men and women who are well known and influential in their community or State. Often such challengers are themselves incumbents in important local, state, or federal offices. Statistics in the record indicate that major party challengers as well as incumbents are capable of raising large sums for campaigning. Indeed, a small but nonetheless significant number of challengers have in recent elections outspent their incumbent rivals. And, to the extent that incumbents generally are more likely than challengers to attract very large contributions, the Act's $1,000 ceiling has the practical effect of benefiting challengers as a class. Contrary to the broad generalization drawn by the appellants, the practical impact of the contribution ceilings in any given election will clearly depend upon the amounts in excess of the ceilings that, for various reasons, the candidates in that election would otherwise have received and the utility of these additional amounts to the candidates. To be sure, the limitations may have a significant effect on particular challengers or incumbents, but the record provides no basis for predicting that such adventitious factors will invariably and invidiously benefit incumbents as a class. Since the danger of corruption and the appearance of corruption apply with equal force to challengers and to incumbents, Congress had ample justification for imposing the same fundraising constraints upon both.

The charge of discrimination against minor party and independent candidates is more troubling, but the record provides no basis for concluding that the Act invidiously disadvantages such candidates. As noted above, the Act, on its face treats, all candidates equally with regard to contribution limitations. And the restriction would appear to benefit minor party and independent candidates relative to their major party opponents, because major party candidates receive far more money in large contributions. Although there is some force tax appellants' response that minor party candidates are primarily concerned with their ability to amass the resources necessary to reach the electorate, rather than with their funding position relative to their major party opponents, the record is virtually devoid of support for the claim that the $1,000 contribution limitation will have a serious effect on the initiation and scope of minor party and independent candidacies. Moreover, any attempt to exclude minor parties and independents *en masse* from the Act's contribution limitations overlooks the fact that minor party candidates may win elective office or have a substantial impact on the outcome of an election.

In view of these considerations, we conclude that the impact of the Act's $1,000 contribution limitation on major party challengers and on minor party candidates does not render the provision unconstitutional on its face. . .

The Act's expenditure ceilings impose direct and substantial restraints on the quantity of political speech. The most drastic of the limitations restricts individuals and groups, including political parties that fail to place a candidate on the ballot, to an expenditure of $1,000 "relative to a clearly identified candidate during a calendar year." § 608(e)(1). Other expenditure ceilings limit spending by candidates, § 608(a), their campaigns, § 608(c), and political parties in connection with election campaigns, § 608(f). It is clear that a primary effect of these expenditure limitations is to restrict the quantity of campaign speech by individuals, groups, and candidates. The restrictions, while neutral as to the ideas expressed, limit political expression "at the core of our electoral process and of the First Amendment freedoms." *Williams v. Rhodes.*

The constitutional deficiencies described in *Thomas v. Collins* can be avoided only by reading § 608(e)(1) as limited to communications that include explicit words of advocacy of election or defeat of a candidate, much as the definition of "clearly identified" in

§ 608(e)(2) requires that an explicit and unambiguous reference to the candidate appear as part of the communication. This is the reading of the provision suggested by the nongovernmental appellees in arguing that "[f]unds spent to propagate one's views on issues without expressly calling for a candidate's election or defeat are thus not covered." We agree that, in order to preserve the provision against invalidation on vagueness grounds, § 608(e)(1) must be construed to apply only to expenditures for communications that, in express terms advocate the election or defeat of a clearly identified candidate for federal office. [in the footnote: *This construction would restrict the application of § 608(e)(1) to communications containing express words of advocacy of election or defeat, such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject."*

We turn then to the basic First Amendment question – whether § 608(e)(1), even as thus narrowly and explicitly construed, impermissibly burdens the constitutional right of free expression. The Court of Appeals summarily held the provision constitutionally valid on the ground that "section 608(e) is a loophole-closing provision only" that is necessary to prevent circumvention of the contribution limitations. We cannot agree. . .

We find that the governmental interest in preventing corruption and the appearance of corruption is inadequate to justify § 608(e)(1)'s ceiling on independent expenditures. First, assuming, *arguendo,* that large independent expenditures pose the same dangers of actual or apparent *quid pro quo* arrangements as do large contributions, § 608(e)(1) does not provide an answer that sufficiently relates to the elimination of those dangers. Unlike the contribution limitations' total ban on the giving of large amounts of money to candidates, § 608(e)(1) prevents only some large expenditures. So long as persons and groups eschew expenditures that, in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views. The exacting interpretation of the statutory language necessary to avoid unconstitutional vagueness thus undermines the limitation's effectiveness as a loophole-closing provision by facilitating circumvention by those seeking to exert improper influence upon a candidate or officeholder. It would naively underestimate the ingenuity and resourcefulness of persons and groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted the restriction on express advocacy of election or defeat, but nevertheless benefited the candidate's campaign. Yet no substantial societal interest would be served by a loophole-closing provision designed to check corruption that permitted unscrupulous persons and organizations to expend unlimited sums of money in order to obtain improper influence over candidates for elective office. *Cf. Mills v. Alabama*.

Second, quite apart from the shortcomings of § 608(e)(1) in preventing any abuses generated by large independent expenditures, the independent advocacy restricted by the provision does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions. The parties defending § 608(e)(1) contend that it is necessary to prevent would-be contributors from avoiding the contribution limitations by the simple expedient of paying directly for media advertisements or for other portions of the candidate's campaign activities. They argue that expenditures controlled by or coordinated with the candidate and his campaign might well have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. Yet such controlled or coordinated expenditures are treated as contributions, rather than expenditures under the Act. Section 608(b)'s contribution ceilings, rather than § 608(e)(1)'s independent expenditure limitation, prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions. By contrast, 608(e)(1) limits expenditures for express advocacy of candidates made totally independently of the candidate and his campaign. Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign, and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expen-

ditures will be given as a *quid pro quo* for improper commitments from the candidate. Rather than preventing circumvention of the contribution limitations, § 608(e)(1) severely restricts all independent advocacy despite its substantially diminished potential for abuse.

While the independent expenditure ceiling thus fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process, it heavily burdens core First Amendment expression. For the First Amendment right to "speak one's mind. . . on all public institutions" includes the right to engage in "'vigorous advocacy' no less than 'abstract discussion.'" *New York Times Co. v Sullivan.* Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation. It is argued, however, that the ancillary governmental interest in equalizing the relative ability of individuals and groups to influence the outcome of elections serves to justify the limitation on express advocacy of the election or defeat of candidates imposed by § 608(e)(1)'s expenditure ceiling. But the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed "to secure 'the widest possible dissemination of information from diverse and antagonistic sources,'" and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *New York Times Co. v. Sullivan.* The First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion. *Cf. Eastern R. Conf. v. Noerr Motors. . .*

For the reasons stated, we conclude that § 608(e)(1)'s independent expenditure limitation is unconstitutional under the First Amendment. . .

Section 608(c) places limitations on over-all campaign expenditures by candidates seeking nomination for election and election to federal office. Presidential candidates may spend $10,000,000 in seeking nomination for office, and an additional $20,000,000 in the general election campaign. The ceiling on senatorial campaigns is pegged to the size of the voting-age population of the State, with minimum dollar amounts applicable to campaigns in States with small populations. In senatorial primary elections, the limit is the greater of eight cents multiplied by the voting-age population or $100,000, and, in the general election, the limit is increased to 12 cents multiplied by the voting-age population, or $150,000. The Act imposes blanket $70,000 limitations on both primary campaigns and general election campaigns for the House of Representatives, with the exception that the senatorial ceiling applies to campaigns in States entitled to only one Representative. These ceilings are to be adjusted upwards at the beginning of each calendar year by the average percentage rise in the consumer price index for the 12 preceding months.

No governmental interest that has been suggested is sufficient to justify the restriction on the quantity of political expression imposed by § 608(c)'s campaign expenditure limitations. The major evil associated with rapidly increasing campaign expenditures is the danger of candidate dependence on large contributions. The interest in alleviating the corrupting influence of large contributions is served by the Act's contribution limitations and disclosure provisions, rather than by § 608(c)'s campaign expenditure ceilings. The Court of Appeals' assertion that the expenditure restrictions are necessary to reduce the incentive to circumvent direct contribution limits is not persuasive. There is no indication that the substantial criminal penalties for violating the contribution ceilings, combined with the political repercussion of such violations, will be insufficient to police the contribution provisions. Extensive reporting, auditing, and disclosure requirements applicable to both contributions and expenditures by political campaigns are designed to facilitate the detection of illegal contributions. Moreover, as the Court of Appeals noted, the Act permits an officeholder or successful candidate to retain contributions in excess of the expenditure ceiling, and to use these funds for "any other lawful purpose." This provision undercuts

whatever marginal role the expenditure limitations might otherwise play in enforcing the contribution ceilings.

The interest in equalizing the financial resources of candidates competing for federal office is no more convincing a justification for restricting the scope of federal election campaigns. Given the limitation on the size of outside contributions, the financial resources available to a candidate's campaign, like the number of volunteers recruited, will normally vary with the size and intensity of the candidate's support. There is nothing invidious, improper, or unhealthy in permitting such funds to be spent to carry the candidate's message to the electorate. Moreover, the equalization of permissible campaign expenditures might serve not to equalize the opportunities of all candidates, but to handicap a candidate who lacked substantial name recognition or exposure of his views before the start of the campaign.

The campaign expenditure ceilings appear to be designed primarily to serve the governmental interests in reducing the allegedly skyrocketing costs of political campaigns. Appellees and the Court of Appeals stressed statistics indicating that spending for federal election campaigns increased almost 300% between 1952 and 1972 in comparison with a 57.6% rise in the consumer price index during the same period. Appellants respond that, during these years, the rise in campaign spending lagged behind the percentage increase in total expenditures for commercial advertising and the size of the gross national product. In any event, the mere growth in the cost of federal election campaigns, in and of itself, provides no basis for governmental restrictions on the quantity of campaign spending and the resulting limitation on the scope of federal campaigns. The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution, it is not the government, but the people – individually, as citizens and candidates, and collectively, as associations and political committees – who must retain control over the quantity and range of debate on public issues in a political campaign.

For these reasons, we hold that § 608(c) is constitutionally invalid. . .

The 1974 amendments to the Act create an eight-member Federal Election Commission (Commission) and vest in it primary and substantial responsibility for administering and enforcing the Act. The question that we address in this portion of the opinion is whether, in view of the manner in which a majority of its members are appointed, the Commission may, under the Constitution, exercise the powers conferred upon it. . .

The body in which this authority is reposed consists of eight members. The Secretary of the Senate and the Clerk of the House of Representatives are *ex officio* members of the Commission without the right to vote. Two members are appointed by the President *pro tempore* of the Senate "upon the recommendations of the majority leader of the Senate and the minority leader of the Senate." Two more are to be appointed by the Speaker of the House of Representatives, likewise upon the recommendations of its respective majority and minority leaders. The remaining two members are appointed by the President. Each of the six voting members of the Commission must be confirmed by the majority of both Houses of Congress, and each of the three appointing authorities is forbidden to choose both of their appointees from the same political party. . .

Our inquiry, of necessity, touches upon the fundamental principles of the Government established by the Framers of the Constitution, and all litigants and all of the courts which have addressed themselves to the matter start on common ground in the recognition of the intent of the Framers that the powers of the three great branches of the National Government be largely separate from one another.

James Madison, writing in the Federalist No. 47, defended the work of the Framers against the charge that these three governmental powers were not entirely separate from one another in the proposed Constitution. He asserted that, while there was some admixture, the Constitution was nonetheless true to Montesquieu's well-known maxim that the legislative, executive, and judicial departments ought to be separate and distinct:

The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. "When the legislative and executive powers are united in the same person or body," says he, there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner. . .

Some of these reasons are more fully explained in other passages; but, briefly stated as they are here, they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author.

Yet it is also clear from the provisions of the Constitution itself, and from the Federalist Papers, that the Constitution by no means contemplates total separation of each of these three essential branches of Government. The President is a participant in the lawmaking process by virtue of his authority to veto bills enacted by Congress. The Senate is a participant in the appointive process by virtue of its authority to refuse to confirm persons nominated to office by the President. The men who met in Philadelphia in the summer of 1787 were practical statesmen, experienced in politics, who viewed the principle of separation of powers as a vital check against tyranny. But they likewise saw that a hermetic sealing off of the three branches of Government from one another would preclude the establishment of a Nation capable of governing itself effectively. . .

The Constitution, for purposes of appointment, very clearly divides all its officers into two classes. The primary class requires a nomination by the President and confirmation by the Senate. But foreseeing that, when offices became numerous, and sudden removals necessary, this mode might be inconvenient, it was provided that, in regard to officers inferior to those specially mentioned, Congress might, by law, vest their appointment in the President alone, in the courts of law, or in the heads of departments. *That all persons who can be said to hold an office under the government about to be established under the Constitution were intended to be included within one or the other of these modes of appointment there can be but little doubt.* (Emphasis supplied.)

We think that the term "Officers of the United States," as used in Art. II, defined to include "all persons who can be said to hold an office under the government" in *United States v. Germaine, supra,* is a term intended to have substantive meaning. We think its fair import is that any appointee exercising significant authority pursuant to the laws of the United States is an "Officer of the United States," and must, therefore, be appointed in the manner prescribed by § 2, cl. 2, of that Article.

If "all persons who can be said to hold an office under the government about to be established under the Constitution were intended to be included within one or the other of these modes of appointment," *United States v. Germaine,* it is difficult to see how the members of the Commission may escape inclusion. If a postmaster first class, *Myers v. United States,* and the clerk of a district court, *Ex parte Hennen,* are inferior officers of the United States within the meaning of the Appointments Clause, as they are, surely the Commissioners before us are, at the very least, such "inferior Officers" within the meaning of that Clause.

Although two members of the Commission are initially selected by the President, his nominations are subject to confirmation not merely by the Senate, but by the House of Representatives as well. The remaining four voting members of the Commission are appointed by the President *pro tempore* of the Senate and by the Speaker of the House. While the second part of the Clause authorizes Congress to vest the appointment of the officers described in that part in "the Courts of Law, or in the Heads of Departments," neither the Speaker of the House nor the President *pro tempore* of the Senate comes within this language.

The phrase "Heads of Departments," used as it is in conjunction with the phrase "Courts of Law," suggests that the Departments referred to are themselves in the Executive Branch or at least have some connection with that branch. While the Clause expressly authorizes Congress to vest the appointment of certain officers in the "Courts of Law," the absence

of similar language to include Congress must mean that neither Congress nor its officers were included within the language "Heads of Departments" in this part of cl. 2.

Thus, with respect to four of the six voting members of the Commission, neither the President, the head of any department, nor the Judiciary has any voice in their selection.

The Appointments Clause specifies the method of appointment only for "Officers of the United States" whose appointment is not "otherwise provided for" in the Constitution. But there is no provision of the Constitution remotely providing any alternative means for the selection of the members of the Commission or for anybody like them. Appellee Commission has argued, and the Court of Appeals agreed, that the Appointments Clause of Art. II should not be read to exclude the "inherent power of Congress" to appoint its own officers to perform functions necessary to that body as an institution. But there is no need to read the Appointments Clause contrary to its plain language in order to reach the result sought by the Court of Appeals. Article I, § 3, cl. 5, expressly authorizes the selection of the President *pro tempore* of the Senate, and § 2, cl. 5, of that Article provides for the selection of the Speaker of the House. Ranking nonmembers, such as the Clerk of the House of Representatives, are elected under the internal rules of each House, and are designated by statute as "officers of the Congress." There is no occasion for us to decide whether any of these member officers are "Officers of the United States" whose "appointment" is otherwise provided for within the meaning of the Appointments Clause, since, even if they were such officers, their appointees would not be. Contrary to the fears expressed by the majority of the Court of Appeals, nothing in our holding with respect to Art. II, § 2, cl. 2, will deny to Congress "all power to appoint its own inferior officers to carry out appropriate legislative functions". . .

Our conclusion on the merits, sustained by the arguments before stated, is that Article II grants to the President the executive power of the Government, *i.e.,* the general administrative control of those executing the laws, including the power of appointment and removal of executive officers – a conclusion confirmed by his obligation to take care that the laws be faithfully executed. . .

In summary, we sustain the individual contribution limits, the disclosure and reporting provisions, and the public financing scheme. We conclude, however, that the limitations on campaign expenditures, on independent expenditures by individuals and groups, and on expenditures by a candidate from his personal funds are constitutionally infirm. Finally, we hold that most of the powers conferred by the Act upon the Federal Election Commission can be exercised only by "Officers of the United States," appointed in conformity with Art. II, § 2, cl. 2, of the Constitution, and therefore cannot be exercised by the Commission as presently constituted.

The Federal Election Campaign Act Amendments of 1976

90 Stat. 475 (1976)

Usually, the reaction of Congress to a Supreme Court decision finding its legislation in part or in whole unconstitutional is immediate, if the majority of representatives and/or Senators believe that the legislative department, as being superior to the judicial branch, should directly or indirectly overrule the Court's precedent. In 1976, however, one could observe a quick, but positive reaction of House of Representatives and Senate to the *Buckley* holding, resulting in the implementation of new provisions, which amended the 1971 and 1974 laws. Congress was in a hurry, as its members wanted the reform to come into force before the 1976 elections.

Importantly, the legislation referred not only to the regulations on expenditure limits, and the appointment of the Federal Election Commission's employees (granted to the president, who acted with the advice and consent of the Senate), but also to the operation of political action committees (restricting the financing of PACs by labor unions and corporations), and to the public financing program for presidential elections. Furthermore, Congress decided to equip the Commission with broader powers, such as the power to prosecute civil violations of campaign finance regulations.

An Act to amend the Federal Election Campaign Act of 1971 to provide that members of the Federal Election Commission shall be appointed by the President, by and with the advice and consent of the Senate, and for other purposes. . .

SEC. 101. (a) (1) The second sentence of section 309(a)(1) of the Federal Election Campaign Act of 1971, as redesignated by section 105 (hereinafter in this Act referred to as the "Act"), is amended to read as follows: "The Commission is composed of the Secretary of the Senate and the Clerk of the House of Representatives, ex officio and without the right to vote, and 6 members appointed by the President of the United States, by and with the advice and consent of the Senate." (2) The last sentence of section 309(a)(1) of the Act, as redesignated by section 105, is amended to read as follows: "No more than 3 members of the Commission appointed under this paragraph may be affiliated with the same political party."

(b) Section 309(a) (2) of the Act, as redesignated by section 105, is amended to read as follows: (2) (A) Members of the Commission shall serve for terms of 6 years, except that of the members first appointed—(i) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1977; (ii) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1979; and (iii) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1981. (B) A member of the Commission may serve on the Commission after the expiration of his term until his successor has taken office as a member of the Commission. (C) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. (D) Any vacancy occurring in the membership of the Commission shall be filled in the same manner as in the case of the original appointment.

(c) (l) Section 309 (a) (3) of the Act, as redesignated by section 105, is amended by adding at the end thereof he following new sentences: "Members of the Commission shall not engage in any other business, vocation, or employment. Any individual who is engaging in any other business, vocation, or employment at the time such individual begins to serve as a member of the Commission shall terminate or liquidate such activity no later than 1 year after beginning to serve as such a member." (2) Section 309(b) of the Act, as redesignated by section 105, is amended to read as follows: (b) (1) The Commission shall administer, seek to obtain compliance with, and formulate policy with respect to, this Act and chapter 95 and chapter 96 of the Internal Revenue Code of 1954. The Commission shall have exclusive primary jurisdiction with respect to the civil enforcement of such provisions.

(2) Nothing in this Act shall be construed to limit, restrict, or diminish any investigatory, informational, oversight, supervisory, or disciplinary authority or function of the Congress or any committee of the Congress with respect to elections for Federal office.

(3) The first sentence of section 309(c) of the Act, as redesignated by section 105, is amended by inserting immediately before the period at the end thereof the following: except that the affirmative vote of 4 members of the Commission shall be required in order for the Commission to establish guidelines for compliance with the provisions of this Act or with chapter 95 or chapter 96 of the Internal Revenue Code of 1954, or for the Commission to take any action in accordance with paragraph (6), (7), (8), or (10) of section 310(a). . .

(e) (1) The President shall appoint members of the Federal Election Commission under section 309(a) of the Act, as redesignated by section 105 and as amended by this section, as soon as practicable after the date of the enactment of this Act.

(2) The first appointments made by the President under section 309(a) of the Act, as redesignated by section 105 and as amended by this section, shall not be considered to be appointments to fill the unexpired terms of members serving on the Federal Election Commission on the date of the enactment of this Act.

(3) Members serving on the Federal Election Commission on the date of the enactment of this Act may continue to serve as such members until new members are appointed and qualified under section 309(a) of the Act, as redesignated by section 105 and as amended by this section, except that until appointed and qualified under this Act, members serving on such Commission on such date of enactment may, beginning on March 23, 1976, exercise only such powers and functions as may be consistent with the determinations of the Supreme Court of the United States in Buckley et al. against Valeo, Secretary of the United States Senate, et al., January 30,1976.

(f) The provisions of section 309(a) (3) of the Act, as redesignated by section 105, which prohibit any individual from being appointed as a member of the Federal Election Commission who is, at the time of his appointment, an elected or appointed officer or employee of the executive, legislative, or judicial branch of the Federal Government, shall not apply in the

case of any individual serving as a member of such Commission on the date of the enactment of this Act. . .

SEC. 320. (a) (1) No person shall make contributions— (A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000; (B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $20,000; or (C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(2) No multicandidate political committee shall make contributions— (A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000; (B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000; or (C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(3) No individual shall make contributions aggregating more than $25,000 in any calendar year. For purposes of this paragraph, any contribution made to a candidate in a year other than the calendar year in which the election is held with respect to which such contribution is made, is considered to be made during the calendar year in which such election is held.

(4) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which are national. State, district, or local committees (including any subordinate committee thereof) of the same political party. For purposes of paragraph (2), the term 'multicandidate political committee' means a political committee which has been registered under section 303 for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee, except that (A) nothing in this sentence shall limit transfers between political committees of funds raised through joint fund raising efforts; (B) for purposes of the limitations provided by paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not be considered to have been made by a single political committee; and (C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office if (i) such transfer is not made when the candidate is actively seeking nomination or election to both such offices; (ii) the limitations contained in this Act on contributions by persons are not exceeded by such transfer; and (iii) the candidate has not elected to receive any funds under chapter 95 or chapter 96 of the Internal Revenue Code of 1954. In any case in which a corporation and any of its subsidiaries, branches, divisions, departments, or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments, or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for purposes of the limitations provided by paragraph (1) and paragraph (2).

(6) The limitations on contributions to a candidate imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

(7) For purposes of this subsection— (A) contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on his behalf shall be considered to be contributions made to such candidate; (B) (i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate; (ii) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for purposes of this paragraph; and (C) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions, which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

(b)(1) No candidate for the office of President of the United States who is eligible under section 9003 of the Internal Revenue Code of 1954 (relating to condition for eligibility for payments) or under section 9033 of the Internal Revenue Code of 1954 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of— (A) $10,000,000, in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e)), or $200,000; or (B) $20,000,000 in the case of a campaign for election to such office.

(2) For purposes of this subsection— (A) expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States; and (B) an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by— (i) an authorized committee or any other agent of the candidate for purposes of making any expenditure; or (ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

(c) (1) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Each limitation established by subsection (b) and subsection (d) shall be increased by such percent difference. Each amount so increased shall be the amount in effect for such calendar year.

(2) For purposes of paragraph (1) — (A) the term 'price index' means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and (B) the term 'base period' means the calendar year 1974.

(d) (1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under sub- section (e)). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds— (A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of— (i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e); or (ii) $20,000; and (B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000. . .

(h) Notwithstanding any other provision of this Act, amounts totaling not more than $17,500 may be contributed to a candidate for nomination for election, or for election, to the United States Senate during the year in which an election is held in which he is such a candidate, by the Republican or Democratic Senatorial Campaign Committee, or the national committee of a political party, or any combination of such committees.

SEC. 321. (a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

(b) (1) For the purposes of this section the term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole of in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) For purposes of this section and section 12(h) of the Public Utility Holding Company Act, the term 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, but shall not include

(A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject; (B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and (C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(3) It shall be unlawful— (A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction; (B) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee of the political purposes of such fund at the time of such solicitation; and (C) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee, at the time of such solicitation, of his right to refuse to so contribute with- out any reprisal.

(4) (A) Except as provided in subparagraphs (B), (C), and (D), it shall be unlawful— (i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and (ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

(B) it shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by such corporation or such labor organization, to make 2 written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residence and shall be designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of $50 or less as a result of such solicitation and who does not make such a contribution.

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

First National Bank of Boston v. Bellotti

435 U.S. 675 (1978)

Among the various arguments raised by critics of the growing impact of money in the electoral process, one of the most frequently made concerns the dangerous influence of corporations on the system, sometimes to the extent of their being described as the main source of corruption and bribery. Such an approach resulted in the passage of different laws and regulations by many states, aimed at restricting the financial activities undertaken by corporations before and during election campaigns. An example of such measures could be found in 1970s in Massachusetts, where the legislature established an act banning corporations from funding ballot initiatives if they had no direct interest in such a contribution. The controversy over the scope of the restrictions led to a lawsuit which ended in the Supreme Court in 1978, known as *First National Bank of Boston v. Bellotti*.

The First National Bank of Boston was subject to the restrictions provided by The Bay State law, and it could not freely participate in a campaign before a state referendum on taxation issues, so the bank's representatives challenged the state restrictions in court. On appeal, the issue was brought to the Supreme Court, which, in a 5–4 ruling, declared Massachusetts' regulation unconstitutional as it violated the right of corporations to participate in various stages of the non-candidate election campaign. The majority opinion stated that corporations were protected by the free speech clause of the First Amendment, which was similar to the argumentation used by the Justices in the *Buckley* opinion. Despite the fact that the *Bellotti* decision referred mainly to state law, the argumentation used by the Justices became crucial for most of the 21st century cases concerning campaign finance, which cite *Bellotti's* reasoning almost as often as *Buckley's*.

MR. JUSTICE POWELL delivered the opinion of the Court

> The statute at issue, Mass.Gen.Laws Ann., ch. 55, § 8 prohibits appellants, two national banking associations and three business corporations, from making contributions or expenditures "for the purpose of. . . influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation." The statute further specifics that "[n]o question submitted to the voters solely concerning the taxation of the income, property or transactions of indi-

viduals shall be deemed materially to affect the property, business or assets of the corporation". . .

The speech proposed by appellants is at the heart of the First Amendment's protection. "The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment . . . Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." *Thornhill v. Alabama*. The referendum issue that appellants wish to address falls squarely within this description. In appellants' view, the enactment of a graduated personal income tax, as proposed to be authorized by constitutional amendment, would have a seriously adverse effect on the economy of the State. The importance of the referendum issue to the people and government of Massachusetts is not disputed. Its merits, however, are the subject of sharp disagreement.

As the Court said in *Mills v. Alabama*, "there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs."

If the speakers here were not corporations, no one would suggest that the State could silence their proposed speech. It is the type of speech indispensable to decision-making in a democracy, and this is no less true because the speech comes from a corporation, rather than an individual. The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual.

The court below nevertheless held that corporate speech is protected by the First Amendment only when it pertains directly to the corporation's business interests. In deciding whether this novel and restrictive gloss on the First Amendment comports with the Constitution and the precedents of this Court, we need not survey the outer boundaries of the Amendment's protection of corporate speech, or address the abstract question whether corporations have the full measure of rights that individuals enjoy under the First Amendment.

The question in this case, simply put, is whether the corporate identity of the speaker deprives this proposed speech of what otherwise would be its clear entitlement to protection. We turn now to that question. . .

We find no support in the First or Fourteenth Amendment, or in the decisions of this Court, for the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation that cannot prove, to the satisfaction of a court, a material effect on its business or property. The "materially affecting" requirement is not an identification of the boundaries of corporate speech etched by the Constitution itself. Rather, it amounts to an impermissible legislative prohibition of speech based on the identity of the interests that spokesmen may represent in public debate over controversial issues and a requirement that the speaker have a sufficiently great interest in the subject to justify communication.

Section 8 permits a corporation to communicate to the public its views on certain referendum subjects – those materially affecting its business – but not others. It also singles out one kind of ballot question – individual taxation – as a subject about which corporations may never make their ideas public. The legislature has drawn the line between permissible and impermissible speech according to whether there is a sufficient nexus, as defined by the legislature, between the issue presented to the voters and the business interests of the speaker.

In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue. *Police Dept. of Chicago v. Mosley.* If a legislature may direct business corporations to "stick to business," it also may limit other corporations – religious,

charitable, or civic – to their respective "business" when addressing the public. Such power in government to channel the expression of views is unacceptable under the First Amendment. Especially where, as here, the legislature's suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended. Yet the State contends that its action is necessitated by governmental interests of the highest order. . .

[A]ppellee argues that § 8 protects corporate shareholders, an interest that is both legitimate and traditionally within the province of state law. The statute is said to serve this interest by preventing the use of corporate resources in furtherance of views with which some shareholders may disagree. This purpose is belied, however, by the provisions of the statute, which are both underinclusive and overinclusive.

The underinclusiveness of the statute is self-evident. Corporate expenditures with respect to a referendum are prohibited, while corporate activity with respect to the passage or defeat of legislation is permitted, even though corporations may engage in lobbying more often than they take positions on ballot questions submitted to the voters. Nor does § 8 prohibit a corporation from expressing its views, by the expenditure of corporate funds, on any public issue until it becomes the subject of a referendum, though the displeasure of disapproving shareholders is unlikely to be any less.

The fact that a particular kind of ballot question has been singled out for special treatment undermines the likelihood of a genuine state interest in protecting shareholders. It suggests instead that the legislature may have been concerned with silencing corporations on a particular subject. Indeed, appellee has conceded that

"the legislative and judicial history of the statute indicates. . . that the second crime was 'tailor-made' to prohibit corporate campaign contributions to oppose a graduated income tax amendment."

Nor is the fact that § 8 is limited to banks and business corporations without relevance. Excluded from its provisions and criminal sanctions are entities or organized groups in which numbers of persons may hold an interest or membership, and which often have resources comparable to those of large corporations. Minorities in such groups or entities may have interests with respect to institutional speech quite comparable to those of minority shareholders in a corporation. Thus, the exclusion of Massachusetts business trusts, real estate investment trusts, labor unions, and other associations undermines the plausibility of the State's purported concern for the persons who happen to be shareholders in the banks and corporations covered by § 8.

The overinclusiveness of the statute is demonstrated by the fact that § 8 would prohibit a corporation from supporting or opposing a referendum proposal even if its shareholders unanimously authorized the contribution or expenditure. Ultimately shareholders may decide, through the procedures of corporate democracy, whether their corporation should engage in debate on public issues. Acting through their power to elect the board of directors or to insist upon protective provisions in the corporation's charter, shareholders normally are presumed competent to protect their own interests. In addition to intracorporate remedies, minority shareholders generally have access to the judicial remedy of a derivative suit to challenge corporate disbursements alleged to have been made for improper corporate purposes or merely to further the personal interests of management.

Assuming, *arguendo,* that protection of shareholders is a "compelling" interest under the circumstances of this case, we find "no substantially relevant correlation between the governmental interest asserted and the State's effort" to prohibit appellants from speaking. *Shelton v. Tucker*. . .

Because that portion of § 8 challenged by appellants prohibits protected speech in a manner unjustified by a compelling state interest, it must be invalidated.

The Federal Election Campaign Act Amendments of 1979

90 Stat. 339 (1979)

In the late 1970s, Congress initiated a third revision of the Federal Election Campaign Act, voting for amendments to the legislation in 1979, which were enacted in early 1980. Contrarily to the reasons for earlier amendments, which were imposed after political scandals (1974) and a Supreme Court decision (1976), this time the legislators decided to make changes in the regulations analyzing the conduct of the federal elections of 1976 and 1978. One of the main purposes of the revision of campaign finance law was a simplification of the procedures referring to the disclosure of campaign reports, which was achieved by diminishing the amount of reports, as well as reducing the number of subjects responsible for the disclosure of documentation. The other significant input of the 1979 amendments was the enhancement of the public financing program, through an increase in the amount of funds used in that program. Generally, the law was intended to make the procedures simpler, which was the main notion of election campaign participants, as well as the critics of FECA. Finally, the amendment sought to promote raising turnout and party-building activities. It raised the allowable expenditures of state and local parties, as long as they were coordinated with federal office candidates, particularly in presidential races. Yet while it aimed at voting registration drives and get-out-the-vote activities, it soon became a major source of *soft money* proliferation.

Despite the fact that Congress implemented small changes to the FECA in the 1980s, there was no further major legislation concerning campaign finance until the beginning of the 21st century, when the *Bipartisan Campaign Reform Act* was adopted.

An Act to amend the Federal Election Campaign Act of 1971 to make certain changes in the reporting and disclosure requirements of such Act, and for other purposes. . .

SEC. 304. (a)(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.

(2) If the political Committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate— (A) in any calendar year during which there is regularly scheduled election for which such candidate is seeking election, or nomination for election, the treasurer shall file the following reports: (i) a pre-election report, which shall be filed no later than the 12th day before (or posted by registered or certified mail no later than the 15th day before) any election in which such candidate is seeking election, or nomination for election, and which shall be complete as of the 20th day before such election; (ii) a post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election; and (iii) additional quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year; and (B) in any other calendar year the following reports shall be filed: (i) a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31; and (ii) a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year.

(3) If the committee is the principal campaign committee of a candidate for the office of President—

(A) in any calendar year during which a general election is held to fill such office— (i) the treasurer shall file monthly reports if such committee has on January 1 of such year, received contributions aggregating $100,000 or made expenditures aggregating $100,000 or anticipates receiving contributions aggregating $100,000 or more or making expenditures aggregating $100,000 or more during such year: such monthly reports shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month, except that, in lieu of filing the report otherwise due in November and December, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post- general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year; (ii) the treasurer of the other principal campaign commit- tees of a candidate for the office of President shall file a pre- election report or reports in accordance with paragraph (2)(A)(i), a post-general election report in accordance with paragraph (2)(A)(ii), and quarterly reports in accordance with paragraph (2)(A)(iii); and (iii) if at any time during the election year a committee filing under paragraph (3)(A)(ii) receives contributions in excess of $100,000 or makes expenditures in excess of $100,000, the treasurer shall begin filing monthly reports- under paragraph (3)(A)(i) at the next reporting period; and (B) in any other calendar year, the treasurer shall file either— (i) monthly reports, which shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month; or (ii) quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter and which shall be complete as of the last day of each calendar quarter.

(4) All political committees other than authorized committees of a candidate shall file either— (A)(i) quarterly reports, in a calendar year in which a regularly scheduled general election is held, which shall be filed no later than the 15th day after the last day of each calendar quarter: except that the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31 of the following calendar year; (ii) a pre-election report, which shall be filed no later than the 12th day before (or posted by registered or certified mail no later than the 15th day before) any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election; (iii) a post-general election report, which shall be filed no later than the 30th day after the general election and which shall be complete as of the 20th day after such general election; and (iv) in any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report

covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year; or (B) monthly reports in all calendar years which shall be filed no later than the 20th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.

(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii)) is sent by registered or certified mail, the United States postmark shall be considered the date of filing of the designation, report, or statement.

(6)(A) The principal campaign committee of a candidate shall notify the Clerk, the Secretary, or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. (B) The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

(7) The reports required to be filed by this subsection shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward.

(8) The requirement for a political committee to file a quarterly report under paragraph (2)(A)(iii) or paragraph (4)(A)(i) shall be waived if such committee is required to file a pre-election report under paragraph (2)(A)(i), or paragraph (4)(A)(ii) during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(9) The Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and political committees filing under paragraph (4)(A) which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall require no more than one pre-election report for each election and one post-election report for the election, which fills the vacancy. The Commission may waive any reporting obligation of committees required to file for special elections if any report required by paragraph (2) or (4) is required to be filed within 10 days of a report required under this subsection. The Commission shall establish the reporting dates within 5 days of the setting of such election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.

(10) The treasurer of a committee supporting a candidate for the office of Vice President (other than the nominee of a political party) shall file reports in accordance with paragraph (3).

(b) Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) for the reporting period and the calendar year, the total amount of all receipts, and the total amount of all receipts in the following categories: (A) contributions from persons other than political committees; (B) for an authorized committee, contributions from the candidate; (C) contributions from political party committees; (D) contributions from other political committees; (E) for an authorized committee, transfers from other authorized committees of the same candidate; (F) transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other political party committees, regardless of whether such committees are affiliated; (G) for an

authorized committee, loans made by or guar- anteed by the candidate; (H) all other loans; (I) rebates, refunds, and other offsets to operating expenditures; (J) dividends, interest, and other forms of receipts; and (K) for an authorized committee of a candidate for the office of President, Federal funds received under chapter 95 and chapter 96 of the Internal Revenue Code of 1954;

(3) the identification of each— (A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution; (B) political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution; (C) authorized committee which makes a transfer to the reporting committee; (D) affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer; (E) person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loan; (F) person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of such receipt; and (G) person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of $200 within the calendar year, together with the date and amount of any such receipt;

(4) for the reporting period and the calendar year, the total amount of all disbursements, and all disbursements in the following categories: (A) expenditures made to meet candidate or committee operating expenses; (B) for authorized committees, transfers to other commit- tees authorized by the same candidate; (C) transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated; (D) for an authorized committee, repayment of loans made by or guaranteed by the candidate; (E) repayment of all other loans; (F) contribution refunds and other offsets to contributions; (G) for an authorized committee, any other disbursements; (H) for any political committee other than an authorized committee— (i) contributions made to other political committees; (ii) loans made by the reporting committees; (iii) independent expenditures; (iv) expenditures made under section 315(d) of this Act; and (v) any other disbursements; and (I) for an authorized committee of a candidate for the office of President, disbursements not subject to the limitation of section 315(b);

(5) the name and address of each— (A) person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure; (B) authorized committee to which a transfer is made by the reporting committee; (C) affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party commit- tee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers; (D) person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment; and (E) person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement;

(6)(A) for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in

excess of $200 within the calendar year, together with the date and amount of any such disbursement; (B) for any other political committee, the name and address of each— (i) political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution; (ii) person who has received a loan from the reporting committee during the reporting period, together with the date and amount of such loan; (iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee; (iv) person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under section 315(d) in the Act, together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made; and (v) person who has received any disbursement not other- wise disclosed in this paragraph or paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year from the reporting committee within the reporting period, together with the date, amount, and purpose of any such disbursement;

(7) the total sum of all contributions to such political commit- tee, together with the total contributions less offsets to contributions and the total sum of all operating expenditures made by such political committee, together with total operating expenditures less offsets to operating expenditures, for both the reporting period and the calendar year; and

(8) the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.

California Medical Association v. F.E.C.

453 U.S. 182 (1981)

It seemed that after major changes in the original version of the Federal Election Campaign Act, which, among other reasons, resulted from a judicial review of the law by the Supreme Court, there would be no serious challenge to the constitutionality of campaign finance law. The analysis of the political and legal history of the 1980s and 1990s, however, reveals quite an opposite situation. In these two decades there were several suits in the federal courts, which raised various problems on the scope of the legislation, both from the procedural as well as substantive perspectives. One of the first important cases regarding the constitutionality of FECA was *California Medical Association, et al. v. F.E.C.*, decided by the Supreme Court in 1981.

The petitioners, a non-profit medical organization, had created in the mid 1970s a political action committee (the California Medical Political Action Committee), the goal of which was to support candidates in legislative elections. As a formal committee, it was subject to the limitations imposed on similar organizations, stemming from the provisions of Federal Election Campaign Act. When the Federal Election Commission, responsible for overseeing the enforcement of federal campaign finance laws, found out that the committee had exceeded the acceptable contribution limits, it filed a lawsuit against the California Medical Association. After winning in the District Court, and losing in the Court of Appeals, the association brought the case to the Supreme Court. The issue was similar to the earlier challenges of the campaign finance laws, as it referred to the accordance of the Federal Election Campaign Act with the First Amendment's freedom of speech guarantees. The Court found that free speech was not violated by the contribution limits set by FECA, arguing that such limits served a compelling state interest: the protection of the integrity of the electoral process. The precedent was reached by a 5–4 margin, proving that the Justices were divided over the meaning of campaign finance restrictions, and the scope of the First Amendment's protection of candidates and other participants of the process.

MR. JUSTICE MARSHALL delivered the opinion of the Court

In this case, we consider whether provisions of the Federal Election Campaign Act of 1971, as amended, limiting the amount an unincorporated association may contribute to a multicandidate political committee violate the First Amendment or the equal protection component of the Fifth Amendment. Concluding that these contribution limits are constitutional, we affirm the judgment of the Court of Appeals for the Ninth Circuit. . .

Appellants' First Amendment claim is based largely on this Court's decision in *Buckley v. Valeo*. That case involved a broad challenge to the constitutionality of the 1974 Amendments to the Federal Election Campaign Act. We held, *inter alia,* that the limitations placed by the Act on campaign expenditures violated the First Amendment in that they directly restrained the rights of citizens, candidates, and associations to engage in protected political speech. Nonetheless, we upheld the various ceilings the Act placed on the contributions individuals and multicandidate political committees could make to candidates and their political committees, and the maximum aggregate amount any individual could contribute in any calendar year. We reasoned that such contribution restrictions did not directly infringe on the ability of contributors to express their own political views, and that such limitations served the important governmental interests in preventing the corruption or appearance of corruption of the political process that might result if such contributions were not restrained.

Although the $5,000 annual limit imposed by § 441a(a)(1)(C) on the amount that individuals and unincorporated associations may contribute to political committees is, strictly speaking, a contribution limitation, appellants seek to bring their challenge to this provision within the reasoning of *Buckley.* First, they contend that § 441a(a)(1)(C) is akin to an unconstitutional expenditure limitation because it restricts the ability of CMA to engage in political speech through a political committee, CALPAC. Appellants further contend that even if the challenged provision is viewed as a contribution limitation, it is qualitatively different from the contribution restrictions we upheld in *Buckley.* Specifically, appellants assert that, because the contributions here flow to a political committee, rather than to a candidate, the danger of actual or apparent corruption of the political process recognized by this Court in *Buckley* as a sufficient justification for contribution restrictions is not present in this case.

While these contentions have some surface appeal, they are, in the end, unpersuasive. The type of expenditures that this Court in *Buckley* considered constitutionally protected were those made *independently* by a candidate, individual, or group in order to engage directly in political speech. Nothing in § 441a(a)(1)(C) limits the amount CMA or any of its members may independently expend in order to advocate political views; rather, the statute restrains only the amount that CMA may contribute to CALPAC. Appellants nonetheless insist that CMA's contributions to CALPAC should receive the same constitutional protection as independent expenditures because, according to appellants, this is the manner in which CMA has chosen to engage in political speech.

We would naturally be hesitant to conclude that CMA's determination to fund CALPAC rather than to engage directly in political advocacy is entirely unprotected by the First Amendment. Nonetheless, the "speech by proxy" that CMA seeks to achieve through its contributions to CALPAC is not the sort of political advocacy that this Court in *Buckley* found entitled to full First Amendment protection. CALPAC, as a multicandidate political committee, receives contributions from more than 50 persons during a calendar year. Thus, appellants' claim that CALPAC is merely the mouthpiece of CMA is untenable. CALPAC, instead, is a separate legal entity that receives funds from multiple sources and that engages in independent political advocacy. Of course, CMA would probably not contribute to CALPAC unless it agreed with the views espoused by CALPAC, but this sympathy of interests alone does not convert CALPAC's speech into that of CMA.

Our decision in *Buckley* precludes any argument to the contrary. In that case, the limitations on the amount individuals could contribute to candidates and campaign organizations were challenged on the ground that they limited the ability of the contributor to express his political views, albeit through the speech of another. The Court, in dismissing the claim, noted: "While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate *involves speech by someone other than the contributor.*"

This analysis controls the instant case. If the First Amendment rights of a contributor are not infringed by limitations on the amount he may contribute to a campaign organization which advocates the views and candidacy of a particular candidate, the rights of a contributor are similarly not impaired by limits on the amount he may give to a multicandidate political committee, such as CALPAC, which advocates the views and candidacies of a number of candidates.

We also disagree with appellants' claim that the contribution restriction challenged here does not further the governmental interest in preventing the actual or apparent corruption of the political process. Congress enacted § 441a(a)(1)(C) in part to prevent circumvention of the very limitations on contributions that this Court upheld in *Buckley*. Under the Act, individuals and unincorporated associations such as CMA may not contribute more than $1,000 to any single candidate in any calendar year. Moreover, individuals may not make more than $25,000 in aggregate annual political contributions. If appellants' position – that Congress cannot prohibit individuals and unincorporated associations from making unlimited contributions to multicandidate political committees – is accepted, then both these contribution limitations could be easily evaded. Since multicandidate political committees may contribute up to $5,000 per year to any candidate, 2 U.S.C. § 441a(a)(2)(A), an individual or association seeking to evade the $1,000 limit on contributions to candidates could do so by channeling funds through a multicandidate political committee. Similarly, individuals could evade the $25,000 limit on aggregate annual contributions to candidates if they were allowed to give unlimited sums to multicandidate political committees, since such committees are not limited in the aggregate amount they may contribute in any year. These concerns prompted Congress to enact § 441a(a)(1)(C), and it is clear that this provision is an appropriate means by which Congress could seek to protect the integrity of the contribution restrictions upheld by this Court in *Buckley.*

Appellants also challenge the restrictions on contributions to political committees on the ground that they violate the equal protection component of the Fifth Amendment. Under the statute, corporations and labor unions may pay for the establishment, administration, and solicitation expenses of a "separate segregated fund to be utilized for political purposes." Contributions by these groups to such funds are not limited by the statute. Appellants assert that a corporation's or a union's contribution to its segregated political fund is directly analogous to an unincorporated association's contributions to a multicandidate political committee. Thus, they conclude that, because contributions are unlimited in the former situation, they cannot be limited in the latter without violating equal protection.

We have already concluded that § 441a(a)(1)(C) does not offend the First Amendment. In order to conclude that it nonetheless violates the equal protection component of the Fifth Amendment, we would have to find that, because of this provision the Act burdens the First Amendment rights of persons subject to § 441a(a)(1)(C) to a greater extent than it burdens the same rights of corporations and unions, and that such differential treatment is not justified. We need not consider this second question – whether the discrimination alleged by appellants is justified – because we find no such discrimination. Appellants' claim of unfair treatment ignores the plain fact that the statute as a whole imposes far *fewer* restrictions on individuals and unincorporated associations than it does on corporations and unions. Persons subject to the restrictions of § 441a(a)(1)(C) may make unlimited expenditures on political speech; corporations and unions, however, may make only the limited contributions authorized by § 441b(b)(2). Furthermore, indi-

viduals and unincorporated associations may contribute to candidates, to candidates' committees, to national party committees and to all other political committees, while corporations and unions are absolutely barred from making any such contributions. In addition, multicandidate political committees are generally unrestricted in the manner and scope of their solicitations; the segregated funds that unions and corporations may establish pursuant to § 441b(b)(2)(C) are carefully limited in this regard. The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process. Appellants do not challenge any of the restrictions on the corporate and union political activity, yet these restrictions entirely undermine appellants' claim that, because of §441a(a)(1)(C), the Act discriminates against individuals and unincorporated associations in the exercise of their First Amendment rights.

Accordingly, we conclude that the $5,000 limitation on the amount that persons may contribute to multicandidate political committees violates neither the First nor the Fifth Amendment.

F.E.C. v. National Conservative Political Action Committee

470 U.S. 480 (1985)

The issues raised in the *California Medical Association* decision, on the proper conduct of political action committees in election campaigns, were the subjects of many other cases decided by federal courts in the 1980s. One of the most important disputes was *F.E.C. v. National Conservative Political Action Committee*, argued and decided in the Supreme Court's 1984–1985 term. The National Conservative Political Action Committee (NCPAC), founded in 1975, became a major contributor to Republican Party candidates in their campaigns for Congress and the White House in the early 1980s. Recognized as a very influential political organization of the right side of the ideological sphere in the United States at that time, the committee supported conservative candidates by collecting funds for their campaigns, as well as preparing media advertisements attacking their political opponents.

The Federal Election Commission filed a suit against the conservative political action committee when it was revealed that the organization had spent more than $1,000 on the campaign supporting a candidate for the presidency, which was a violation of one of the provisions of the Federal Election Campaign Act. After a long battle in the lower courts, the highest judicial tribunal in the U.S. took the case in order to define the constitutionality of expenditure limits. In a 7–2 decision, announced by William Rehnquist, the Court used the freedom of speech argument to declare that parts of the Federal Election Commission Act violated the First Amendment, as such issues were beyond the power of the government. The decision underlined the important role of political action committees in the electoral process, defending their status as independent organizations which could openly participate in election campaigns.

MR. JUSTICE REHNQUIST delivered the opinion of the Court. . .

NCPAC is a nonprofit, non-membership corporation formed under the District of Columbia Nonprofit Corporation Act in August, 1975, and registered with the FEC as a political committee. Its primary purpose is to attempt to influence directly or indirectly the election or defeat of candidates for federal, state, and local offices by making contributions and by making its own expenditures. It is governed by a three-member board of directors,

which is elected annually by the existing board. The board's chairman and the other two members make all decisions concerning which candidates to support or oppose, the strategy and methods to employ, and the amounts of money to spend. Its contributors have no role in these decisions. It raises money by general and specific direct mail solicitations. It does not maintain separate accounts for the receipts from its general and specific solicitations, nor is it required by law to do so.

FCM is incorporated under the laws of Virginia, and is registered with the FEC as a multi-candidate political committee. In all material respects it is identical to NCPAC.

Both NCPAC and FCM are self-described ideological organizations with a conservative political philosophy. They solicited funds in support of President Reagan's 1980 campaign, and they spent money on such means as radio and television advertisements to encourage voters to elect him President. On the record before us, these expenditures were "independent" in that they were not made at the request of or in coordination with the official Reagan election campaign committee or any of its agents. Indeed, there are indications that the efforts of these organizations were at times viewed with disfavor by the official campaign as counterproductive to its chosen strategy. NCPAC and FCM expressed their intention to conduct similar activities in support of President Reagan's reelection in 1984, and we may assume that they did so.

As noted above, both the Fund Act and FECA play a part in regulating Presidential campaigns. The Fund Act comes into play only if a candidate chooses to accept public funding of his general election campaign, and it covers only the period between the nominating convention and 30 days after the general election. In contrast, FECA applies to all Presidential campaigns, as well as other federal elections, regardless of whether publicly or privately funded. Important provisions of these Acts have already been reviewed by this Court in *Buckley v. Valeo*. Generally, in that case we upheld as constitutional the limitations on *contributions to candidates,* and struck down as unconstitutional *limitations on independent expenditures.*

In these cases, we consider provisions of the Fund Act that make it a criminal offense for political committees such as NCPAC and FCM to make independent expenditures in support of a candidate who has elected to accept public financing. Specifically, § 9012(f) provides: "(1) . . . it shall be unlawful for any political committee which is not an authorized committee with respect to the eligible candidates of a political party for President and Vice President in a presidential election knowingly and willfully to incur expenditures to further the election of such candidates, which would constitute qualified campaign expenses if incurred by an authorized committee of such candidates, in an aggregate amount exceeding $1,000."

The term "political committee" is defined to mean "any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to Federal, State, or local elective public office."

The term "qualified campaign expense" simply means an otherwise lawful expense by a candidate or his authorized committee "to further his election" incurred during the period between the candidate's nomination and 30 days after election. The term "eligible candidates" means those Presidential and Vice Presidential candidates who are qualified under the Act to receive public funding and have chosen to do so. Two of the more important qualifications are that a candidate and his authorized committees not incur campaign expenses in excess of his public funding and not accept contributions to defray campaign expenses.

There is no question that NCPAC and FCM are political committees and that President Reagan was a qualified candidate, and it seems plain enough that the PACs' expenditures fall within the term "qualified campaign expense." The PACs have argued in this Court, though apparently not below, that § 9012(f) was not intended to cover truly independent expenditures such as theirs, but only coordinated expenditures. But "expenditures in

cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents," are considered "contributions" under the FECA, and as such are already subject to FECA's $1,000 and $5,000 limitations in §§ 441a(a)(1), (2). Also, as noted above, one of the requirements for public funding is the candidate's agreement not to accept such contributions. Under the PACs' construction, § 9012(f) would be wholly superfluous, and we find no support for that construction in the legislative history. We conclude that the PACs' independent expenditures at issue in this case are squarely prohibited by § 9012(f), and we proceed to consider whether that prohibition violates the First Amendment.

There can be no doubt that the expenditures at issue in this case produce speech at the core of the First Amendment. . .

The PACs in this case, of course, are not lone pamphleteers or street corner orators in the Tom Paine mold; they spend substantial amounts of money in order to communicate their political ideas through sophisticated media advertisements. And of course the criminal sanction in question is applied to the expenditure of money to propagate political views, rather than to the propagation of those views unaccompanied by the expenditure of money. But for purposes of presenting political views in connection with a nationwide Presidential election, allowing the presentation of views while forbidding the expenditure of more than $1,000 to present them is much like allowing a speaker in a public hall to express his views while denying him the use of an amplifying system. . .

We also reject the notion that the PACs' form of organization or method of solicitation diminishes their entitlement to First Amendment protection. The First Amendment freedom of association is squarely implicated in these cases. NCPAC and FCM are mechanisms by which large numbers of individuals of modest means can join together in organizations which serve to "amplif[y] the voice of their adherents." *Buckley v. Valeo, NAACP v. Alabama*; *Citizens Against Rent Control v. Berkeley*. It is significant that, in 1979–1980, approximately 101,000 people contributed an average of $75 each to NCPAC, and in 1980, approximately 100,000 people contributed an average of $25 each to FCM. . .

Having concluded that the PACs' expenditures are entitled to full First Amendment protection, we now look to see if there is a sufficiently strong governmental interest served by § 9012(f)'s restriction on them, and whether the section is narrowly tailored to the evil that may legitimately be regulated. The restriction involved here is not merely an effort by the Government to regulate the use of its own property, such as was involved in *United States Postal Service v. Greenburgh Civic Assns,* or the dismissal of a speaker from Government employment, such as was involved in *Connick v. Myers*. It is a flat, across-the-board criminal sanction applicable to any "committee, association, or organization" which spends more than $1,000 on this particular type of political speech.

We held in *Buckley* and reaffirmed in *Citizens Against Rent Control* that preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances. In *Buckley,* we struck down the FECA's limitation on individuals' independent expenditures because we found no tendency in such expenditures, uncoordinated with the candidate or his campaign, to corrupt or to give the appearance of corruption. For similar reasons, we also find § 9012(f)'s limitation on independent expenditures by political committees to be constitutionally infirm.

Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns. The hallmark of corruption is the financial *quid pro quo:* dollars for political favors. But here the conduct proscribed is not contributions to the candidate, but independent expenditures in support of the candidate. The amounts given to the PACs are overwhelmingly small contributions, well under the $1,000 limit on contributions upheld in *Buckley*; and the contributions are, by definition, not coordinated with the campaign of the candidate. The Court concluded in *Buckley* that there was

a fundamental constitutional difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to the candidate to be spent on his campaign. We said there: "Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign, and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate."

We think the same conclusion must follow here. It is contended that, because the PACs may, by the breadth of their organizations, spend larger amounts than the individuals in *Buckley,* the potential for corruption is greater. But precisely what the "corruption" may consist of we are never told with assurance. The fact that candidates and elected officials may alter or reaffirm their own positions on issues in response to political messages paid for by the PACs can hardly be called corruption, for one of the essential features of democracy is the presentation to the electorate of varying points of view. It is of course hypothetically possible here, as in the case of the independent expenditures forbidden in *Buckley,* that candidates may take notice of and reward those responsible for PAC expenditures by giving official favors to the latter in exchange for the supporting messages. But here, as in *Buckley,* the absence of prearrangement and coordination undermines the value of the expenditure to the candidate, and thereby alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate. On this record, such an exchange of political favors for uncoordinated expenditures remains a hypothetical possibility, and nothing more. . .

F.E.C. v. Massachusetts Citizens For Life

479 U.S. 238 (1986)

Just one year after the victory of a Republican-leaning political action committee in the Supreme Court, another campaign finance case, which raised the problem of contributions made by an ideological organization as decided. A non-profit corporation, Massachusetts Citizens for Life (MCL) produced and distributed a newsletter entitled *Everything You Need to Know to Vote Pro-Life*. As this was issued before the primary elections to Congress in 1978, it agitated for those candidates who supported a conservative pro-life ideology. According to the Federal Election Commission, such a contribution to an election campaign by a corporation violated the Federal Election Campaign Act, which prohibited the use of general corporate funds for federal election expenditures. The case against MCL was brought to the court, and on appeal was decided by the Supreme Court in 1986.

In a unanimous opinion (with two Justices concurring), the Court found that the newsletter prepared by the non-profit corporation before the primary elections was protected by the First Amendment, and, therefore, that the provision of the Federal Election Campaign Act banning various forms of corporate contributions to the electoral process was unconstitutional. Although the Court found that MCL's actions directly endorsed certain pro-life candidates, it argued that the idea of expenditure itself constitutes elements of express advocacy, thus being consistent with the elements of the *Buckley* ruling. The decision did not mean that any kind of contribution made by corporations or political action committees was acceptable, but that expenditures made by a non-profit organization, even if they constituted express advocacy communication, were within the scope of freedom of speech.

MR. JUSTICE BRENNAN announced the judgment of the Court. . .

> The questions for decision here arise under § 316 of the Federal Election Campaign Act (FECA or Act), *as renumbered and amended,* 2 U.S.C. § 441b. The first question is whether appellee Massachusetts Citizens for Life, Inc. (MCFL), a nonprofit, non-stock corporation, by financing certain activity with its treasury funds, has violated the restriction on independent spending contained in § 441b. That section prohibits corporations from using treasury funds to make an expenditure "in connection with" any federal election, and requires that any expenditure for such purpose be financed by voluntary

contributions to a separate segregated fund. If appellee has violated § 441b, the next question is whether application of that section to MCFL's conduct is constitutional. We hold that the appellee's use of its treasury funds is prohibited by § 441b, but that § 441b is unconstitutional as applied to the activity of which the Federal Election Commission (FEC or Commission) complains. . .

In September, 1978, MCFL prepared and distributed a "Special Edition" prior to the September, 1978, primary elections. While the May, 1978, newsletter had been mailed to 2,109 people, and the October, 1978, newsletter to 3,119 people, more than 100,000 copies of the "Special Edition" were printed for distribution. The front page of the publication was headlined "EVERYTHING YOU NEED TO KNOW TO VOTE PRO-LIFE," and readers were admonished that "[n]o pro-life candidate can win in November without your vote in September." "VOTE PRO-LIFE" was printed in large bold-faced letters on the back page, and a coupon was provided to be clipped and taken to the polls to remind voters of the name of the "pro-life" candidates. Next to the exhortation to vote "pro-life" was a disclaimer: "This special election edition does not represent an endorsement of any particular candidate". . .

We agree with the Court of Appeals that the "Special Edition" is not outside the reach of § 441b. First, we find no merit in appellee's contention that preparation and distribution of the "Special Edition" does not fall within that section's definition of "expenditure." Section 441b(b)(2) defines "contribution or expenditure" as the provision of various things of value "*to* any candidate, campaign committee, or political party or organization, in connection with any election". . . (emphasis added). MCFL contends that, since it supplied nothing to any candidate or organization, the publication is not within § 441b. However, the general definitions section of the Act contains a broader definition of "expenditure," including within that term the provision of anything of value made "*for the purpose of influencing* any election for Federal office". . .

Th[e] history clearly confirms that § 441b was meant to proscribe expenditures in connection with an election. . . This history makes clear that Congress has long regarded it as insufficient merely to restrict payments made directly to candidates or campaign organizations. The first explicit expression of this came in 1947, when Congress passed the Taft-Hartley Act, *as amended,* 18 U.S.C. § 610 (1970 ed.), the criminal statute prohibiting corporate contributions and expenditures to candidates. The statute, as amended, forbade any corporation or labor organization to make a "contribution or expenditure in connection with any election". . . for federal office. . .

The Federal Election Campaign Act enacted the prohibition now found in § 441b. This portion of the Act simply ratified the existing understanding of the scope of § 610.

Representative Hansen, the sponsor of the provision, declared: "The effect of this language is to carry out the basic intent of section 610, which is to prohibit the use of union or corporate funds for active electioneering directed at the general public on behalf of a candidate in a Federal election". . .

Appellee next argues that the definition of an expenditure under § 441b necessarily incorporates the requirement that a communication "expressly advocate" the election of candidates, and that its "Special Edition" does not constitute express advocacy. The argument relies on the portion of *Buckley v. Valeo* that upheld the disclosure requirement for expenditures by individuals other than candidates and by groups other than political committees. There, in order to avoid problems of overbreadth, the Court held that the term "expenditure" encompassed "only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." The rationale for this holding was: "[T]he distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various issues, but campaigns themselves generate issues of public interest."

We agree with appellee that this rationale requires a similar construction of the more intrusive provision that directly regulates independent spending. We therefore hold that an expenditure must constitute "express advocacy" in order to be subject to the prohibition of § 441b. We also hold, however, that the publication of the "Special Edition" constitutes "express advocacy". . .

In sum, we hold that MCFL's publication and distribution of the "Special Edition" is in violation of § 441b. We therefore turn to the constitutionality of that provision as applied to appellee. . .

The FEC minimizes the impact of the legislation upon MCFL's First Amendment rights by emphasizing that the corporation remains free to establish a separate segregated fund, composed of contributions earmarked for that purpose by the donors that may be used for unlimited campaign spending. However, the corporation is *not* free to use its general funds for campaign advocacy purposes. While that is not an absolute restriction on speech, it is a substantial one. Moreover, even to speak through a segregated fund, MCFL must make very significant efforts. . .

Because it is incorporated, MCFL must establish a "separate segregated fund" if it wishes to engage in any independent spending whatsoever. Since such a fund is considered a "political committee" under the Act, § 431(4)(B), all MCFL independent expenditure activity is, as a result, regulated as though the organization's major purpose is to further the election of candidates. This means that MCFL must comply with several requirements in addition to those mentioned. . . Under § 434, MCFL must file either monthly reports with the FEC or reports on the following schedule: quarterly reports during election years, a pre-election report no later than the 12th day before an election, a post-election report within 30 days after an election, and reports every 6 months during nonelection years. . .

It is evident from this survey that MCFL is subject to more extensive requirements and more stringent restrictions than it would be if it were not incorporated. These additional regulations may create a disincentive for such organizations to engage in political speech. Detailed recordkeeping and disclosure obligations, along with the duty to appoint a treasurer and custodian of the records, impose administrative costs that many small entities may be unable to bear. . .

When a statutory provision burdens First Amendment rights, it must be justified by a compelling state interest. *Williams v. Rhodes*; *NAACP v. Button*. The FEC first insists that justification for § 441b's expenditure restriction is provided by this Court's acknowledgment that "the special characteristics of the corporate structure require particularly careful regulation." *National Right to Work Committee*. The Commission thus relies on the long history of regulation of corporate political activity as support for the application of § 441b to MCFL. . .

Direct corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace. Political "free trade" does not necessarily require that all who participate in the political marketplace do so with exactly equal resources. *See NCPAC* (invalidating limits on independent spending by political committees); *Buckley* (striking down expenditure limits in 1971 Campaign Act). Relative availability of funds is, after all, a rough barometer of public support. The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.

By requiring that corporate independent expenditures be financed through a political committee expressly established to engage in campaign spending, § 441b seeks to prevent this threat to the political marketplace. The resources available to this fund, as opposed to the corporate treasury, in fact reflect popular support for the political positions of the committee. . .

Regulation of corporate political activity thus has reflected concern not about use of the corporate form *per se,* but about the potential for unfair deployment of wealth for political purposes. Groups such as MCFL, however, do not pose that danger of corruption. MCFL was formed to disseminate political ideas, not to amass capital. The resources it has available are not a function of its success in the economic marketplace, but its popularity in the political marketplace. While MCFL may derive some advantages from its corporate form, those are advantages that redound to its benefit as a political organization, not as a profit-making enterprise. In short, MCFL is not the type of "traditional corporatio[n] organized for economic gain," *NCPAC*, that has been the focus of regulation of corporate political activity. . .

The Commission next argues in support of § 441b that it prevents an organization from using an individual's money for purposes that the individual may not support. We acknowledged the legitimacy of this concern as to the dissenting stockholder and union member in *National Right to Work Committee*, and in *Pipefitters.* But such persons, as noted, contribute investment funds or union dues for economic gain, and do not necessarily authorize the use of their money for political ends. Furthermore, because such individuals depend on the organization for income or for a job, it is not enough to tell them that any unhappiness with the use of their money can be redressed simply by leaving the corporation or the union. It was thus wholly reasonable for Congress to require the establishment of a separate political fund to which persons can make voluntary contributions.

This rationale for regulation is not compelling with respect to independent expenditures by appellee. Individuals who contribute to appellee are fully aware of its political purposes, and in fact contribute precisely because they support those purposes. It is true that a contributor may not be aware of the exact use to which his or her money ultimately may be put, or the specific candidate that it may be used to support. However, individuals contribute to a political organization in part because they regard such a contribution as a more effective means of advocacy than spending the money under their own personal direction. Any contribution therefore necessarily involves at least some degree of delegation of authority to use such funds in a manner that best serves the shared political purposes of the organization and contributor. In addition, an individual desiring more direct control over the use of his or her money can simply earmark the contribution for a specific purpose, an option whose availability does not depend on the applicability of § 441b. Finally, a contributor dissatisfied with how funds are used can simply stop contributing.

The Commission maintains that, even if contributors may be aware that a contribution to appellee will be used for political purposes in general, they may not wish such money to be used for electoral campaigns in particular. That is, persons may desire that an organization use their contributions to further a certain cause, but may not want the organization to use their money to urge support for or opposition to political candidates solely on the basis of that cause. This concern can be met, however, by means far more narrowly tailored and less burdensome than § 441b's restriction on direct expenditures: simply requiring that contributors be informed that their money may be used for such a purpose. . .

Finally, the FEC maintains that the inapplicability of § 441b to MCFL would open the door to massive undisclosed political spending by similar entities, and to their use as conduits for undisclosed spending by business corporations and unions. We see no such danger. Even if § 441b is inapplicable, an independent expenditure of as little as $250 by MCFL will trigger the disclosure provisions of § 434(c). As a result, MCFL will be required to identify all contributors who annually provide in the aggregate $200 in funds intended to influence elections, will have to specify all recipients of independent spending amounting to more than $200, and will be bound to identify all persons making contributions over $200 who request that the money be used for independent expenditures. These reporting obligations provide precisely the information necessary to monitor MCFL's independent spending activity and its receipt of contributions. The state interest in disclosure therefore can be met in a manner less restrictive than imposing the full panoply of regulations that accompany status as a political committee under the Act. . .

Furthermore, should MCFL's independent spending become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee, *Buckley*. As such, it would automatically be subject to the obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns. In sum, there is no need for the sake of disclosure to treat MCFL any differently than other organizations that only occasionally engage in independent spending on behalf of candidates.

Thus, the concerns underlying the regulation of corporate political activity are simply absent with regard to MCFL. The dissent is surely correct in maintaining that we should not second-guess a decision to sweep within a broad prohibition activities that differ in degree, but not kind. It is not the case, however, that MCFL merely poses less of a threat of the danger that has prompted regulation. Rather, it does not pose such a threat at all. Voluntary political associations do not suddenly present the specter of corruption merely by assuming the corporate form. Given this fact, the rationale for restricting core political speech in this case is simply the desire for a bright-line rule. This hardly constitutes the *compelling* state interest necessary to justify any infringement on First Amendment freedom. While the burden on MCFL's speech is not insurmountable, we cannot permit it to be imposed without a constitutionally adequate justification. In so holding, we do not assume a legislative role, but fulfill our judicial duty – to enforce the demands of the Constitution.

Our conclusion is that § 441b's restriction of independent spending is unconstitutional as applied to MCFL, for it infringes protected speech without a compelling justification for such infringement. We acknowledge the legitimacy of Congress' concern that organizations that amass great wealth in the economic marketplace not gain unfair advantage in the political marketplace. . .

In particular, MCFL has three features essential to our holding that it may not constitutionally be bound by § 441b's restriction on independent spending. First, it was formed for the express purpose of promoting political ideas, and cannot engage in business activities. If political fundraising events are expressly denominated as requests for contributions that will be used for political purposes, including direct expenditures, these events cannot be considered business activities. This ensures that political resources reflect political support. Second, it has no shareholders or other persons affiliated so as to have a claim on its assets or earnings. This ensures that persons connected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity. Third, MCFL was not established by a business corporation or a labor union, and it is its policy not to accept contributions from such entities. This prevents such corporations from serving as conduits for the type of direct spending that creates a threat to the political marketplace.

It may be that the class of organizations affected by our holding today will be small. That prospect, however, does not diminish the significance of the rights at stake. Freedom of speech plays a fundamental role in a democracy; as this Court has said, freedom of thought and speech "is the matrix, the indispensable condition, of nearly every other form of freedom." *Palko v. Connecticut*. Our pursuit of other governmental ends, however, may tempt us to accept in small increments a loss that would be unthinkable if inflicted all at once. For this reason, we must be as vigilant against the modest diminution of speech as we are against its sweeping restriction. Where at all possible, government must curtail speech only to the degree necessary to meet the particular problem at hand, and must avoid infringing on speech that does not pose the danger that has prompted regulation. In enacting the provision at issue in this case, Congress has chosen too blunt an instrument for such a delicate task.

Austin v. Michigan Chamber of Commerce

494 U.S. 652 (1990)

Despite the fact that most Supreme Court cases referred to the scope of federal campaign finance laws, there were also important disputes over the scope of state campaign regulations, which raised the problem of money as a form of expression, as well as donations made by corporations. Both of these issues occurred in *Austin v. Michigan Chamber of Commerce*, which was decided by the Supreme Court in 1990. From the analysis of judicial reasoning in such decisions, one can derive important arguments regarding the discussion over First Amendment guarantees with regard to financial participation in the electoral process.

The controversy concerned the actions of the Michigan Chamber of Commerce, which intended to publish – even though its ad discussed the issues – materials promoting a candidate to the state legislature. Classified as independent expenditure, it was also prohibited by state law (Michigan Campaign Finance Act of 1976). The law allowed corporate expenditures only if they were made from independent sources, known as 'segregated funds,' but the Michigan Chamber of Commerce used its general funds instead. In a 6–3 decision, the Supreme Court upheld the Michigan regulations, arguing that there was a compelling interest of the state to control the financial participation of corporations in a campaign election. The Justices stated that despite First Amendment protection, the government should manage the process whereby political candidates were controlled by corporate entities. According to the majority, the fact that the Michigan law provided for independent expenditures by corporations reduced the threat of corruption in the system. In a dissenting opinion Justice Antonin Scalia pointed out that the Court should have interpreted the First Amendment free speech guarantees from an originalist perspective and acknowledged a right to political speech by corporations. In 2010, the Supreme Court overruled the *Austin* decision permitting corporate funding in *Citizens United v. F.E.C.*

MR. JUSTICE MARSHALL delivered the opinion of the Court

> In this appeal, we must determine whether § 54(1) of the Michigan Campaign Finance Act violates either the First or the Fourteenth Amendment to the Constitution. Section 54(1) prohibits corporations from using corporate treasury funds for independent expenditures in support of or in opposition to any candidate in elections for state office. Mich.

Comp. Laws § 169.254(1) (1979). Corporations are allowed, however, to make such expenditures from segregated funds used solely for political purposes. § 169.255(1). In response to a challenge brought by the Michigan State Chamber of Commerce, the Sixth Circuit held that § 54(1) could not be applied to the Chamber, a Michigan nonprofit corporation, without violating the First Amendment. Although we agree that expressive rights are implicated in this case, we hold that application of § 54(1) to the Chamber is constitutional because the provision is narrowly tailored to serve a compelling state interest. Accordingly, we reverse the judgment of the Court of Appeals.

To determine whether Michigan's restrictions on corporate political expenditures may constitutionally be applied to the Chamber, we must ascertain whether they burden the exercise of political speech and, if they do, whether they are narrowly tailored to serve a compelling state interest. *Buckley v. Valeo*. Certainly, the use of funds to support a political candidate is "speech" independent campaign expenditures constitute "political expression at the core of our electoral process and of the First Amendment freedoms'." The mere fact that the Chamber is a corporation does not remove its speech from the ambit of the First Amendment. See, e.g., *First National Bank of Boston v. Bellotti*.

This Court concluded in *FEC v. Massachusetts Citizens for Life, Inc.* (*MCFL*), that a federal statute requiring corporations to make independent political expenditures only through special segregated funds, 2 U.S.C. § 441b, burdens corporate freedom of expression. *MCFL.* The Court reasoned that the small nonprofit corporation in that case would face certain organizational and financial hurdles in establishing and administering a segregated political fund. For example, the statute required the corporation to appoint a treasurer for its segregated fund, keep records of all contributions, file a statement of organization containing information about the fund, and update that statement periodically. In addition, the corporation was permitted to solicit contributions to its segregated fund only from "members," which did not include persons who merely contributed to or indicated support for the organization. These hurdles "impose[d] administrative costs that many small entities [might] be unable to bear" and "create[d] a disincentive for such organizations to engage in political speech."

Despite the Chamber's success in administering its separate political fund, Michigan's segregated fund requirement still burdens the Chamber's exercise of expression because "the corporation is not free to use its general funds for campaign advocacy purposes." *MCFL*. The Act imposes requirements similar to those in the federal statute involved in *MCFL:* a segregated fund must have a treasurer, § 169.221, and its administrators must keep detailed accounts of contributions, § 169.224, and file with state officials a statement of organization, *ibid.* In addition, a nonprofit corporation like the Chamber may solicit contributions to its political fund only from members, stockholders of members, officers or directors of members, and the spouses of any of these persons. § 169.255. Although these requirements do not stifle corporate speech entirely, they do burden expressive activity. *See MCFL.* Thus, they must be justified by a compelling state interest.

The State contends that the unique legal and economic characteristics of corporations necessitate some regulation of their political expenditures to avoid corruption or the appearance of corruption. *See FEC v. National Conservative Political Action Comm.* (NCPAC). State law grants corporations special advantages – such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets – that enhance their ability to attract capital and to deploy their resources in ways that maximize the return on their shareholders' investments. These state-created advantages not only allow corporations to play a dominant role in the nation's economy, but also permit them to use "resources amassed in the economic marketplace" to obtain "an unfair advantage in the political marketplace." *MCFL.* As the Court explained in *MCFL,* the political advantage of corporations is unfair because "[t]he resources in the treasury of a business corporation are not an indication of popular support for the corporation's political ideas. They reject instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though

the power of the corporation may be no reflection of the power of its ideas." We therefore have recognized that "the compelling governmental interest in preventing corruption support[s] the restriction of the influence of political war chests funneled through the corporate form." *NCPAC*. . .

The Chamber argues that this concern about corporate domination of the political process is insufficient to justify restrictions on independent expenditures. Although this Court has distinguished these expenditures from direct contributions in the context of federal laws regulating individual donors, *Buckley*, it has also recognized that a legislature might demonstrate a danger of real or apparent corruption posed by such expenditures when made by corporations to influence candidate elections, *Bellotti*. Regardless of whether this danger of "financial *quid pro quo*" corruption, *see NCPAC,* may be sufficient to justify a restriction on independent expenditures, Michigan's regulation aims at a different type of corruption in the political arena: the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas, rather, it ensures that expenditures reflect actual public support for the political ideas espoused by corporations. We emphasize that the mere fact that corporations may accumulate large amounts of wealth is not the justification for § 54; rather, the unique state-conferred corporate structure that facilitates the amassing of large treasuries warrants the limit on independent expenditures. Corporate wealth can unfairly influence elections when it is deployed in the form of independent expenditures, just as it can when it assumes the guise of political contributions. We therefore hold that the State has articulated a sufficiently compelling rationale to support its restriction on independent expenditures by corporations. . .

The Chamber contends that even if the Campaign Finance Act is constitutional with respect to for-profit corporations, it nonetheless cannot be applied to a nonprofit ideological corporation like a chamber of commerce. In *MCFL,* we held that the nonprofit organization there had "features more akin to voluntary political associations than business firms, and therefore should not have to bear burdens on independent spending solely because of [its] incorporated status."

In reaching that conclusion, we enumerated three characteristics of the corporation that were "essential" to our holding. Because the Chamber does not share these crucial features, the Constitution does not require that it be exempted from the generally applicable provisions of § 54(1).

The first characteristic of Massachusetts Citizens for Life, Inc., that distinguished it from ordinary business corporations was that the organization "was formed for the express purpose of promoting political ideas, and cannot engage in business activities." Its articles of incorporation indicated that its purpose was "[t]o foster respect for human life and to defend the right to life of all human beings, born and unborn, through educational, political and other forms of activities," and all of the organization's activities were "designed to further its agenda," *MCFL's* narrow political focus thus "ensure[d] that [its] political resources reflect[ed] political support."

In contrast, the Chamber's bylaws set forth more varied purposes, several of which are not inherently political. For instance, the Chamber compiles and disseminates information relating to social, civic, and economic conditions, trains and educates its members, and promotes ethical business practices. Unlike *MCFL's*, the Chamber's educational activities are not expressly tied to political goals; many of its seminars, conventions, and publications are politically neutral and focus on business and economic issues. The Chamber's President and Chief Executive Officer stated that one of the corporation's main purposes is to provide "service to [its] membership that includes everything from group insurance to educational seminars, and. . . litigation activities on behalf of the business community". . .

We described the second feature of *MCFL* as the absence of "shareholders or other persons affiliated so as to have a claim on its assets or earnings. This ensures that persons con-

nected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity." Although the Chamber also lacks shareholders, many of its members may be similarly reluctant to withdraw as members even if they disagree with the Chamber's political expression, because they wish to benefit from the Chamber's nonpolitical programs and to establish contacts with other members of the business community. The Chamber's political agenda is sufficiently distinct from its educational and outreach programs that members who disagree with the former may continue to pay dues to participate in the latter. Justice KENNEDY ignores these disincentives for withdrawing as a member of the Chamber, stating only that "[o]ne need not become a member. . . to earn a living." Certainly, members would be disinclined to terminate their involvement with the organization on the basis of less extreme disincentives than the loss of employment. Thus, we are persuaded that the Chamber's members are more similar to shareholders of a business corporation than to the members of *MCFL* in this respect.

The final characteristic upon which we relied in *MCFL* was the organization's independence from the influence of business corporations. On this score, the Chamber differs most greatly from the Massachusetts organization. *MCFL* was not established by, and had a policy of not accepting contributions from, business corporations. Thus it could not "serv[e] as [a] condui[t] for the type of direct spending that creates a threat to the political marketplace." In striking contrast, more than three-quarters of the Chamber's members are business corporations, whose political contributions and expenditures can constitutionally be regulated by the State. *See Buckley v. Valeo*. As we read the Act, a corporation's payments into the Chamber's general treasury would not be considered payments to influence an election, so they would not be "contributions" or "expenditures," *see* §§ 169.204(1), 169.206, and would not be subject to the Act's limitations. Business corporations therefore could circumvent the Act's restrictions by funneling money through the Chamber's general treasury. Because the Chamber accepts money from for-profit corporations, it could, absent application of § 54(1), serve as a conduit for corporate political spending. In sum, the Chamber does not possess the features that would compel the State to exempt it from restrictions on independent political expenditures. . .

Michigan identified as a serious danger the significant possibility that corporate political expenditures will undermine the integrity of the political process, and it has implemented a narrowly tailored solution to that problem. By requiring corporations to make all independent political expenditures through a separate fund made up of money solicited expressly for political purposes, the Michigan Campaign Finance Act reduces the threat that huge corporate treasuries amassed with the aid of favorable state laws will be used to influence unfairly the outcome of elections. The Michigan Chamber of Commerce does not exhibit the characteristics identified in *MCFL* that would require the State to exempt it from generally applicable restrictions on independent corporate expenditures. We therefore reverse the decision of the Court of Appeals.

Colorado Republican Federal Campaign Committee v. F.E.C.

518 U.S. 604 (1996)

The last vital Supreme Court decision on the constitutionality of certain regulations of the Federal Election Campaign Act made in the 20th century came in 1996 in *Colorado Republican Federal Campaign Committee v. F.E.C.* The issue referred to the actions undertaken by the Republican Committee in Colorado during the 1986 elections to the state Senate, when it prepared a series of radio advertisements criticizing prospective candidates of the rival Democratic Party. According to FECA provisions, such contributions were prohibited, because the expenditures of political parties during federal election campaigns to Congress were limited. As a result, the Federal Election Commission filed a suit against the operations of the Republican Committee, which, in a countersuit, claimed that federal campaign finance legislation was inconsistent with the constitutional right to free speech. Although the District Court decided to dismiss the case on the grounds of its mootness, the Court of Appeals adjudicated in the dispute, finding no violation of the constitution in FECA's restrictions. Finally, the case was brought to the Supreme Court, which posed a general question on the constitutionality of the FECA provisions regarding campaign contributions by political parties in elections to Congress.

Seven Justices signed the plurality opinion written by Justice Stephen Breyer, in which they declared the constitutionality of the expenditures of political parties which were not made in the name of any candidates and not coordinated with them – thus making them independent expenditures. The Court established that any prohibition of such an expenditure contradicts the principles of free speech and free expression. As a result, the Colorado Republican Federal Campaign Committee won the case, but the Court's holding did not directly overrule any larger piece of campaign finance legislation, as only Justice Clarence Thomas, who wrote a dissent, opted for an argument on the unconstitutionality of the Federal Election Campaign Act's restrictions on political party contributions. Although the Republican Committee also challenged the limits on coordinated expenditures in support of candidates to the House of Representatives and Senate, the Court decided not to consider that issue in the case.

MR. JUSTICE BREYER announced the judgment of the Court. . .

Most of the provisions this Court found unconstitutional imposed *expenditure* limits. Those provisions limited candidates' rights to spend their own money, *Buckley*, limited a candidate's campaign expenditures, limited the right of individuals to make "independent" expenditures (not coordinated with the candidate or candidate's campaign), and similarly limited the right of political committees to make "independent" expenditures, *NCPAC*. The provisions that the Court found constitutional mostly imposed *contribution* limits–limits that apply both when an individual or political committee contributes money directly to a candidate and also when they indirectly contribute by making expenditures that they coordinate with the candidate. See *Buckley*, *California Medical Assn.* Consequently, for present purposes, the Act now prohibits individuals and political committees from making direct, or indirect, contributions that exceed the following limits:

(a) For any "person": $1,000 to a candidate "with respect to any election"; $5,000 to any political committee in any year; $20,000 to the national committees of a political party in any year; but all within an overall limit (for any individual in any year) of $25,000.

(b) For any "multicandidate political committee": $5,000 to a candidate "with respect to any election"; $5,000 to any political committee in any year; and $15,000 to the national committees of a political party in any year.

FECA also has a special provision, directly at issue in this case, that governs contributions and expenditures by political parties. §441a(d). This special provision creates, in part, an *exception* to the above contribution limits. That is, without special treatment, political parties ordinarily would be subject to the general limitation on contributions by a "multicandidate political committee" just described. That provision, as we said in (b) above, limits annual contributions by a "multicandidate political committee" to no more than $5,000 to any candidate. And as also mentioned above, this contribution limit governs not only direct contributions but also indirect contributions that take the form of coordinated expenditures, defined as "expenditures made. . . in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." §441a(a)(7)(B)(i). Thus, ordinarily, a party's coordinated expenditures would be subject to the $5,000 limitation.

However, FECA's special provision, which we shall call the "Party Expenditure Provision," creates a *general exception* from this contribution limitation, and from any other limitation on expenditures. It says:

"Notwithstanding any other provision of law with respect to *limitations on expenditures or limitations on contributions,* . . . political party [committees]. . . may make *expenditures* in connection with the general election campaign of candidates for Federal office". . . §441a(d)(1) (emphasis added).

The summary judgment record indicates that the expenditure in question is what this Court in *Buckley called* an "independent" expenditure, not a "coordinated" expenditure that other provisions of FECA treat as a kind of campaign "contribution." See *Buckley*, *NCPAC*. The record describes how the expenditure was made. In a deposition, the Colorado Party's Chairman, Howard Callaway, pointed out that, at the time of the expenditure, the Party had not yet selected a senatorial nominee from among the three individuals vying for the nomination. He added that he arranged for the development of the script at his own initiative, that he, and no one else, approved it, that the only other politically relevant individuals who might have read it were the party's executive director and political director, and that all relevant discussions took place at meetings attended only by party staff. . .

So treated, the expenditure falls within the scope of the Court's precedents that extend First Amendment protection to independent expenditures. Beginning with *Buckley*, the Court's cases have found a "fundamental constitutional difference between money spent

to advertise one's views independently of the candidate's campaign and money contributed to the candidate to be spent on his campaign." *NCPAC*. This difference has been grounded in the observation that restrictions on contributions impose "only a marginal restriction upon the contributor's ability to engage in free communication," *Buckley*, because the symbolic communicative value of a contribution bears little relation to its size, and because such limits leave "persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." At the same time, reasonable contribution limits directly and materially advance the Government's interest in preventing exchanges of large financial contributions for political favors.

In contrast, the Court has said that restrictions on independent expenditures significantly impair the ability of individuals and groups to engage in direct political advocacy and "represent substantial. . . restraints on the quantity and diversity of political speech." And at the same time, the Court has concluded that limitations on independent expenditures are less directly related to preventing corruption, since "[t]he absence of prearrangement and coordination of an expenditure with the candidate. . . not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate."

Given these established principles, we do not see how a provision that limits a political party's independent expenditures can escape their controlling effect. A political party's independent expression not only reflects its members' views about the philosophical and governmental matters that bind them together, it also seeks to convince others to join those members in a practical democratic task, the task of creating a government that voters can instruct and hold responsible for subsequent success or failure. The independent expression of a political party's views is "core" First Amendment activity no less than is the independent expression of individuals, candidates, or other political committees. See *Eu* v. *San Francisco County Democratic Central Comm*.

We are not aware of any special dangers of corruption associated with political parties that tip the constitutional balance in a different direction. When this Court considered, and held unconstitutional, limits that FECA had set on certain independent expenditures by political action committees, it reiterated *Buckley*'s observation that "the absence of prearrangement and coordination" does not eliminate, but it does help to "alleviate," any "danger" that a candidate will understand the expenditure as an effort to obtain a "*quid pro quo*." See *NCPAC*. The same is true of independent party expenditures. . .

We. . . believe that this Court's prior case law controls the outcome here. We do not see how a Constitution that grants to individuals, candidates, and ordinary political committees the right to make unlimited independent expenditures could deny the same right to political parties. Having concluded this, we need not consider the Party's further claim that the statute's "in connection with" language, and the FEC's interpretation of that language, are unconstitutionally vague. Cf. *Buckley*.

The Government does not deny the force of the precedent we have discussed. Rather, it argued below, and the lower courts accepted, that the expenditure in this case should be treated under those precedents, not as an "independent expenditure," but rather as a "coordinated expenditure," which those cases have treated as "contributions," and which those cases have held Congress may constitutionally regulate. See *Buckley*.

While the District Court found that the expenditure in this case was "coordinated," it did not do so based on any factual finding that the Party had consulted with any candidate in the making or planning of the advertising campaign in question. Instead, the District Court accepted the Government's argument that all party expenditures should be treated as if they had been coordinated *as a matter of law*, "[b]ased on Supreme Court precedent and the Commission's interpretation of the statute." The Court of Appeals agreed with this legal conclusion. Thus, the lower courts' "finding" of coordination does not conflict

with our conclusion, that the summary judgment record shows no actual coordination as a matter of fact. The question, instead, is whether the Court of Appeals erred as a legal matter in accepting the Government's conclusive presumption that all party expenditures are "coordinated." We believe it did. . .

We recognize that the Party filed a counterclaim in which it sought to raise a facial challenge to the Party Expenditure Provision as a whole. But that counterclaim did not focus specifically upon coordinated expenditures. Nor did its summary judgment affidavits specifically allege that the Party intended to make coordinated expenditures exceeding the statute's limits. While this lack of focus does not deprive this Court of jurisdiction to consider a facial challenge to the Party Expenditure Provision as overbroad or as unconstitutional in all applications, it does provide a prudential reason for this Court not to decide the broader question, especially since it may not be necessary to resolve the entire current dispute. If, in fact, the Party wants to make only independent expenditures like those before us, its counterclaim is mooted by our resolution of its "as applied" challenge. Cf. *Renne* v. *Geary Brockett* v. *Spokane Arcades, Inc*.

More importantly, the opinions of the lower courts, and the parties' briefs in this case, did not squarely isolate, and address, party expenditures that *in fact* are coordinated, nor did they examine, in that context, relevant similarities or differences with similar expenditures made by individuals or other political groups. Indeed, to our knowledge, this is the first case in the 20-year history of the Party Expenditure Provision to suggest that in fact coordinated expenditures by political parties are protected from congressional regulation by the First Amendment, even though this Court's prior cases have permitted regulation of similarly coordinated expenditures by individuals and other political groups. See *Buckley*. This issue is complex. As Justice Kennedy points out, party coordinated expenditures do share some of the constitutionally relevant features of independent expenditures. But many such expenditures are also virtually indistinguishable from simple contributions. Moreover, political parties also share relevant features with many PAC's, both having an interest in, and devoting resources to, the goal of electing candidates who will "work to further" a particular "political agenda," which activity would benefit from coordination with those candidates. See, *e.g.*, *NCPAC*. Thus, a holding on in fact coordinated party expenditures necessarily implicates a broader range of issues than may first appear, including the constitutionality of party contribution limits.

Amendment to the Internal Revenue Code

114 Stat. 477 (2000)

Buckley v. Valeo, decided by the Supreme Court in 1976, had a significant impact not only on defining campaign contributions as a form of political speech, but also on the creation of so-called 527 organizations. The name comes from Section 527 of the Internal Revenue Code, which refers to income tax-exempt organizations attempting to influence the election or appointment of candidates to offices at all administrative levels in the United States. As a result, the exemption covered all federal and state political action committees, as well as political party committees involved in the electoral process in American states and on the federal level, which were registered by the Federal Election Commission. Conversely, the law did not require the disclosure of political activities of Section 527 organizations, which were not under the control of the federal agency. In 2000, Congress implemented amendments to the Tax Code, establishing the rule that unregistered organizations would also have to report on their contributions to federal election campaigns.

An Act to amend the Internal Revenue Code of 1986 to require 527 organizations to disclose their political activities

SECTION 1. REQUIRED NOTIFICATION OF SECTION 527 STATUS

(a) In General – Section 527 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection: (i) Organizations Must Notify Secretary That They Are Section 527 Organizations – (1) In general – Except as provided in paragraph (5), an organization shall not be treated as an organization described in this section – (A) unless it has given notice to the Secretary, electronically and in writing, that it is to be so treated, or (B) if the notice is given after the time required under paragraph (2), the organization shall not be so treated for any period before such notice is given. (2) Time to give notice – The notice required under paragraph (1) shall be transmitted not later than 24 hours after the date on which the organization is established. . . (5) Exceptions – This subsection shall not apply to any organization – (A) to which this section applies solely by reason of subsection (f)(1), or (B) which reasonably anticipates that it will not have gross receipts of $25,000 or more for any taxable year. (6) Coordination with other requirements – This subsection shall not apply to any person required (without regard to

this subsection) to report under the Federal Election Campaign Act of 1971 as a political committee.

(b) Disclosure Requirements – (A) In general – The Secretary shall make publicly available, on the Internet and at the offices of the Internal Revenue Service – (i) a list of all political organizations which file a notice with the Secretary under section 527(i), and (ii) the name, address, electronic mailing address, custodian of records, and contact person for such organization. (B) Time to make information available – T he Secretary shall make available the information required under subparagraph (A) not later than 5 business days after the Secretary receives a notice from a political organization under section 527(i). . .

SEC. 2. DISCLOSURES BY POLITICAL ORGANIZATIONS

(a) Required Disclosure of 527 Organizations – Section 527 of the Internal Revenue Code of 1986 (relating to political organizations), as amended by section 1(a), is amended by adding at the end the following new section: Required Disclosure of Expenditures and Contributions –

(1) Penalty for failure – In the case of – (A) a failure to make the required disclosures under paragraph (2) at the time and in the manner prescribed therefor, or (B) a failure to include any of the information required to be shown by such disclosures or to show the correct information there shall be paid by the organization an amount equal to the rate of tax specified in subsection (b)(1) multiplied by the amount to which the failure relates.

(2) Required reports Effective dates – A political organization which accepts a contribution, or makes an expenditure, for an exempt function during any calendar year shall file with the Secretary either – (A)(i) in the case of a calendar year in which a regularly scheduled election is held – (I) quarterly reports, beginning with the first quarter of the calendar year in which a contribution is accepted or expenditure is made, which shall be filed not later than the fifteenth day after the last day of each calendar quarter, except that the report for the quarter ending on December 31 of such calendar year shall be filed not later than January 31 of the following calendar year, (II) a pre-election report, which shall be filed not later than the twelfth day before (or posted by registered or certified mail not later than the fifteenth day before) any election with respect to which the organization makes a contribution or expenditure, and which shall be complete as of the twentieth day before the election, and (III) a post-general election report, which shall be filed not later than the thirtieth day after the general election and which shall be complete as of the twentieth day after such general election, and (ii) in the case of any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year, or (B) monthly reports for the calendar year, beginning with the first month of the calendar year in which a contribution is accepted or expenditure is made, which shall be filed not later than the twentieth day after the last day of the month and shall be complete as if the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with subparagraph (A)(i)(II), a post-general election report shall be filed in accordance with subparagraph (A)(i)(III), and a year end report shall be filed not later than January 31 of the following calendar year.

(3) Contents of report – A report required under paragraph (2) shall contain the following information: (A) The amount of each expenditure made to a person if the aggregate amount of expenditures to such person during the calendar year equals or exceeds $500 and the name and address of the person (in the case of an individual, including the occupation and name of employer of such individual). (B) The name and address (in the case of an individual including the occupation and name of employer of such individual)

of all contributors which contributed an aggregate amount of $200 or more to the organization during the calendar year and the amount of the contribution. Any expenditure or contribution disclosed in a previous reporting period is not required to be included in the current reporting period. . .

(6) Election – For purposes of this subsection, the term 'election' means – (A) a general, special, primary, or runoff election for a Federal office, (B) a convention or caucus of a political party which has authority to nominate a candidate for Federal office, (C) a primary election held for the selection of delegates to a national nominating convention of a political party, or (D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

F.E.C. v. Colorado Republican Federal Campaign Committee

533 U.S. 431 (2001)

In 1996 the Supreme Court adjudicated in *Colorado Republican Federal Campaign Committee v. F.E.C.*, in which the Justices held that the provisions of the Federal Election Campaign Act were not applicable to political party expenditures which were not directly related to any candidate. The Republican Committee challenged in that case the coordinated expenditures restrictions, but the Court did not answer that question. The same issue was repeated by the Committee a few years later, leading to another lawsuit which again ended up in the Supreme Court. As a result, the same Justices answered the same legal question on the scope of the expenditure limits of political parties as imposed by the Federal Election Campaign Act.

The Court declared that restrictions on coordinated expenditures were constitutional as they served an important state interest, and did not violate political parties' right to freely participate in election campaigns for federal offices. This time, however, the distribution of votes was 5–4, producing not only a narrow-margin decision, but also revealing a strong division among liberal and conservative Justices. Sandra Day O'Connor was the only conservative who supported the majority opinion, whereas such Justices as Anthony Kennedy, William Rehnquist, Antonin Scalia, and Clarence Thomas wrote dissenting opinions, in which they undermined the compelling state interest arguments, arguing for broader protection of the freedom of speech of political parties.

MR. JUSTICE SOUTER delivered the opinion of the Court

> In *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n (Colorado I),* we held that spending limits set by the Federal Election Campaign Act were unconstitutional as applied to the Colorado Republican Party's independent expenditures in connection with a senatorial campaign. We remanded for consideration of the party's claim that all limits on expenditures by a political party in connection with congressional campaigns are facially unconstitutional and thus unenforceable even as to spending coordinated with a candidate. Today we reject that facial challenge to the limits on parties' coordinated expenditures. . .

Spending for political ends and contributing to political candidates both fall within the First Amendment's protection of speech and political association. *Buckley*. But ever since we first reviewed the 1971 Act, we have understood that limits on political expenditures deserve closer scrutiny than restrictions on political contributions. . . Restraints on expenditures generally curb more expressive and associational activity than limits on contributions do. *Shrink Missouri*; *Colorado I*; *Buckley*. A further reason for the distinction is that limits on contributions are more clearly justified by a link to political corruption than limits on other kinds of unlimited political spending are (corruption being understood not only as *quid pro quo* agreements, but also as undue influence on an officeholder's judgment, and the appearance of such influence, *Shrink Missouri*. At least this is so where the spending is not coordinated with a candidate or his campaign. *Colorado I, Buckley*. . .

The First Amendment line between spending and donating is easy to draw when it falls between independent expenditures by individuals or political action committees (PACs) without any candidate's approval (or wink or nod), and contributions in the form of cash gifts to candidates. See, *Shrink Missouri, Buckley. . .*

The current contribution limits appear in 2 U. S. C. § 441a(a). They provide that "persons" (still broadly defined) may contribute no more than $1,000 to a candidate "with respect to any election for Federal office," $5,000 to any political committee in any year, and $20,000 to the national committees of a political party in any year. Individuals are limited to a yearly contribution total of $25,000. "[M]ulticandidate political committees" are limited to a $5,000 contribution to a candidate "with respect to any election," $5,000 to any political committee in any year, and $15,000 to the national committees of a political party in any year. Unlike the party expenditure limits, these contribution limits are not adjusted for inflation. . .

[*Colorado I*] still left the question whether the First Amendment allows coordinated election expenditures by parties to be treated functionally as contributions, the way coordinated expenditures by other entities are treated. *Colorado I* found no justification for placing parties at a disadvantage when spending independently; but was there a case for leaving them entirely free to coordinate unlimited spending with candidates when others could not? The principal opinion in *Colorado I* noted that coordinated expenditures "share some of the constitutionally relevant features of independent expenditures." But it also observed that "many [party coordinated expenditures] are. . . virtually indistinguishable from simple contributions." Coordinated spending by a party, in other words, covers a spectrum of activity, as does coordinated spending by other political actors. The issue in this case is, accordingly, whether a party is otherwise in a different position from other political speakers, giving it a claim to demand a generally higher standard of scrutiny before its coordinated spending can be limited. The issue is posed by two questions: does limiting coordinated spending impose a unique burden on parties, and is there reason to think that coordinated spending by a party would raise the risk of corruption posed when others spend in coordination with a candidate? The issue is best viewed through the positions developed by the Party and the Government in this case.

The Party's argument that its coordinated spending, like its independent spending, should be left free from restriction under the *Buckley* line of cases boils down to this: because a party's most important speech is aimed at electing candidates and is itself expressed through those candidates, any limit on party support for a candidate imposes a unique First Amendment burden. The point of organizing a party, the argument goes, is to run a successful candidate who shares the party's policy goals. Therefore, while a campaign contribution is only one of several ways that individuals and nonparty groups speak and associate politically, see *Shrink Missouri*; *Buckley*, financial support of candidates is essential to the nature of political parties as we know them. And coordination with a candidate is a party's natural way of operating, not merely an option that can easily be avoided. Limitation of any party expenditure coordinated with a candidate, the Party contends, is therefore a serious, rather than incidental, imposition on the party's speech

and associative purpose, and that justifies a stricter level of scrutiny than we have applied to analogous limits on individuals and nonparty groups. But whatever level of scrutiny is applied, the Party goes on to argue, the burden on a party reflects a fatal mismatch between the effects of limiting coordinated party expenditures and the prevention of corruption or the appearance of it.

The Government's argument for treating coordinated spending like contributions goes back to *Buckley.* There, the rationale for endorsing Congress's equation of coordinated expenditures and contributions was that the equation "prevent[s] attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions." The idea was that coordinated expenditures are as useful to the candidate as cash, and that such "disguised contributions" might be given "as a *quid pro quo* for improper commitments from the candidate" (in contrast to independent expenditures, which are poor sources of leverage for a spender because they might be duplicative or counterproductive from a candidate's point of view). In effect, therefore, *Buckley* subjected limits on coordinated expenditures by individuals and nonparty groups to the same scrutiny it applied to limits on their cash contributions. The standard of scrutiny requires the limit to be "'closely drawn' to match a 'sufficiently important interest,' though the dollar amount of the limit need not be 'fine tun[ed],'" *Shrink Missouri.*

The Government develops this rationale a step further in applying it here. Coordinated spending by a party should be limited not only because it is like a party contribution, but for a further reason. A party's right to make unlimited expenditures coordinated with a candidate would induce individual and other nonparty contributors to give to the party in order to finance coordinated spending for a favored candidate beyond the contribution limits binding on them. The Government points out that a degree of circumvention is occurring under present law (which allows unlimited independent spending and some coordinated spending). Individuals and nonparty groups who have reached the limit of direct contributions to a candidate give to a party with the understanding that the contribution to the party will produce increased party spending for the candidate's benefit. The Government argues that if coordinated spending were unlimited, circumvention would increase: because coordinated spending is as effective as direct contributions in supporting a candidate, an increased opportunity for coordinated spending would aggravate the use of a party to funnel money to a candidate from individuals and nonparty groups, who would thus bypass the contribution limits that *Buckley* upheld.

Each of the competing positions is plausible at first blush. Our evaluation of the arguments, however, leads us to reject the Party's claim to suffer a burden unique in any way that should make a categorical difference under the First Amendment. On the other side, the Government's contentions are ultimately borne out by evidence, entitling it to prevail in its characterization of party coordinated spending as the functional equivalent of contributions.

. . .There are two basic arguments here. The first turns on the relationship of a party to a candidate: a coordinated relationship between them so defines a party that it cannot function as such without coordinated spending, the object of which is a candidate's election. We think political history and political reality belie this argument. The second argument turns on the nature of a party as uniquely able to spend in ways that promote candidate success. We think that this argument is a double-edged sword, and one hardly limited to political parties. . .

Parties perform functions more complex than simply electing candidates; whether they like it or not, they act as agents for spending on behalf of those who seek to produce obligated officeholders. It is this party role, which functionally unites parties with other self-interested political actors that the Party Expenditure Provision targets. This party role, accordingly, provides good reason to view limits on coordinated spending by parties through the same lens applied to such spending by donors, like PACs, that can use parties as conduits for contributions meant to place candidates under obligation. . .

Insofar as the Party suggests that its strong working relationship with candidates and its unique ability to speak in coordination with them should be taken into account in the First Amendment analysis, we agree. It is the accepted understanding that a party combines its members' power to speak by aggregating contributions and broadcasting messages more widely than individual contributors generally could afford to do, and the party marshals this power with greater sophistication than individuals generally could, using such mechanisms as speech coordinated with a candidate. In other words, the party is efficient in generating large sums to spend and in pinpointing effective ways to spend them. Cf. *Colorado I.*

It does not, however, follow from a party's efficiency in getting large sums and spending intelligently that limits on a party's coordinated spending should be scrutinized under an unusually high standard, and in fact any argument from sophistication and power would cut both ways. On the one hand, one can seek the benefit of stricter scrutiny of a law capping party coordinated spending by emphasizing the heavy burden imposed by limiting the most effective mechanism of sophisticated spending. And yet it is exactly this efficiency culminating in coordinated spending that (on the Government's view) places a party in a position to be used to circumvent contribution limits that apply to individuals and PACs, and thereby to exacerbate the threat of corruption and apparent corruption that those contribution limits are aimed at reducing. As a consequence, what the Party calls an unusual burden imposed by regulating its spending is not a simple premise for arguing for tighter scrutiny of limits on a party; it is the premise for a question pointing in the opposite direction. If the coordinated spending of other, less efficient and perhaps less practiced political actors can be limited consistently with the Constitution, why would the Constitution forbid regulation aimed at a party whose very efficiency in channeling benefits to candidates threatens to undermine the contribution (and hence coordinated spending) limits to which those others are unquestionably subject. . .

The Party's arguments for being treated differently from other political actors subject to limitation on political spending under the Act do not pan out. Despite decades of limitation on coordinated spending, parties have not been rendered useless. In reality, parties continue to organize to elect candidates, and also function for the benefit of donors whose object is to place candidates under obligation, a fact that parties cannot escape. Indeed, parties' capacity to concentrate power to elect is the very capacity that apparently opens them to exploitation as channels for circumventing contribution and coordinated spending limits binding on other political players. And some of these players could marshal the same power and sophistication for the same electoral objectives as political parties themselves. . .

Finally, the Party falls back to claiming that, even if there is a threat of circumvention, the First Amendment demands a response better tailored to that threat than a limitation on spending, even coordinated spending. The Party has two suggestions. First, it says that better crafted safeguards are in place already, in particular the earmarking rule of § 441a(a)(8), which provides that contributions that "are in any way earmarked or otherwise directed through an intermediary or conduit to [a] candidate" are treated as contributions to the candidate. The Party says that this provision either suffices to address any risk of circumvention or would suffice if clarified to cover practices like tallying. This position, however, ignores the practical difficulty of identifying and directly combating circumvention under actual political conditions. Donations are made to a party by contributors who favor the party's candidates in races that affect them; donors are (of course) permitted to express their views and preferences to party officials; and the party is permitted (as we have held it must be) to spend money in its own right. When this is the environment for contributions going into a general party treasury, and candidate-fundraisers are rewarded with something less obvious than dollar-for-dollar pass-throughs (distributed through contributions and party spending), circumvention is obviously very hard to trace. The earmarking provision, even if it dealt directly with tallying, would reach only the most clumsy attempts to pass contributions through to candidates. To treat the earmarking provision as the outer limit of acceptable tailoring would disarm any serious

effort to limit the corrosive effects of what Chief Judge Seymour called "'understandings' regarding what donors give what amounts to the party, which candidates are to receive what funds from the party, and what interests particular donors are seeking to promote," (dissenting opinion). . .

The Party's second preferred prescription for the threat of an end run calls for replacing limits on coordinated expenditures by parties with limits on contributions to parties, the latter supposedly imposing a lesser First Amendment burden. The Party thus invokes the general rule that contribution limits take a lesser First Amendment toll, expenditure limits a greater one. That was one strand of the reasoning in *Buckley* itself, which rejected the argument that limitations on independent expenditures by individuals, groups, and candidates were justifiable in order to avoid circumvention of contribution limitations. It was also one strand of the logic of the *Colorado I* principal opinion in rejecting the Party Expenditure Provision's application to independent party expenditures.

In each of those cases, however, the Court's reasoning contained another strand. The analysis ultimately turned on the understanding that the expenditures at issue were not potential alter egos for contributions, but were independent and therefore functionally true expenditures, qualifying for the most demanding First Amendment scrutiny employed in *Buckley. Colorado I*; *Buckley*. Thus, in *Colorado I* we could not assume, "absent convincing evidence to the contrary," that the Party's independent expenditures formed a link in a chain of corruption by-conduit. "The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate," *Buckley*; therefore, "the constitutionally significant fact" in *Colorado* I was "the lack of coordination between the candidate and the source of the expenditure."

Here, however, just the opposite is true. There is no significant functional difference between a party's coordinated expenditure and a direct party contribution to the candidate, and there is good reason to expect that a party's right of unlimited coordinated spending would attract increased contributions to parties to finance exactly that kind of spending. Coordinated expenditures of money donated to a party are tailor-made to undermine contribution limits. Therefore the choice here is not, as in *Buckley* and *Colorado* I, between a limit on pure contributions and pure expenditures. The choice is between limiting contributions and limiting expenditures whose special value as expenditures is also the source of their power to corrupt. Congress is entitled to its choice.

We hold that a party's coordinated expenditures, unlike expenditures truly independent, may be restricted to minimize circumvention of contribution limits.

The Bipartisan Campaign Reform Act

116 Stat. 81 (2002)

After congressional legislative activity in the 1970s, which resulted in the establishment of a set of rules governing federal campaign finance, the pace of reform of the electoral process slowed down, and it was the Supreme Court which took the initiative in reshaping the meaning of certain regulations referring to campaign contributions and spending, as well as disclosure procedures. It would be a mistake, however, to consider that politicians did not try to argue in congressional debates on amending the Federal Elections Campaign Act, which was criticized especially during and after those electoral cycles which revealed the growing impact of money on the electoral process. The 1980s and 1990s saw an intensified operation of political action committees, both from the perspective of their number and the amount of funds they contributed to federal campaigns. Besides PACs' and national political committees' contributions, one of the major problems occurred with the increased role of so-called *soft money*, defined as funds which were not under the control of federal campaign finance, but served indirectly as an important source of candidates' organization of election campaigns. Soft money was collected by numerous entities, such as corporations and labor unions, to cover administrative costs, voter turnout programs, grassroots activities or media advertisements, aimed at preparing and conducting political campaigns on the federal level. As more than $700 million was spent this way in the 1990s, soft money became a major target of the campaign finance reformers.

Proposals were prepared by Republicans and Democrats working together over and above political divisions, and aimed at limiting the role of soft money and restricting issue advertising, as well as enhancing the enforcement provisions of campaign finance regulations. After tensions in the House of Representatives and Senate, Congress finally adopted the new law in 2002, known as the Bipartisan Campaign Reform Act (BCRA). Among its many provisions, the Act banned political party committees from collecting and spending funds in connection with federal elections, if they were not subject to campaign finance regulations and limitations. It restricted the functioning of national party committees and political action committees, and the form and character of candidates' expenditures. Importantly, BCRA created a new category of "electioneering communications", referring to various types of communications made in support of candidates to federal offices in a fixed period of time. The Act also raised the limits on what individuals were able to contribute to a candidate, national party committee and PAC as well as the overall limits (aggregate limits) that could be donated

to these entities. All these limits were now to be updated by the FEC in every electoral cycle. Despite its bipartisan character, the law was quickly challenged in the courts by politicians who felt that it imposed too-broad restrictions on subjects participating in federal election campaigns.

An Act to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform. . .

SEC. 101. SOFT MONEY OF POLITICAL PARTIES. . .

(a) National Committees. (1) In general – A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act. (2) Applicability – The prohibition established by paragraph (1) applies to any such national committee, any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee.

(b) State, District, and Local Committees – (1) In general – Except as provided in paragraph (2), an amount that is expended or disbursed for Federal election activity by a State, district, or local committee of a political party (including an entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party and an officer or agent acting on behalf of such committee or entity), or by an association or similar group of candidates for State or local office or of individuals holding State or local office, shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act. . .

(c) Fundraising Costs – An amount spent by a person described in subsection (a) or (b) to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

(d) Tax-Exempt Organizations – A national, State, district, or local committee of a political party (including a national congressional campaign committee of a political party), an entity that is directly or indirectly established, financed, maintained, or controlled by any such national, State, district, or local committee or its agent, and an officer or agent acting on behalf of any such party committee or entity, shall not solicit any funds for, or make or direct any donations to – (1) an organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) and that makes expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity); or (2) an organization described in section 527 of such Code (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

(e) Federal Candidates – (1) In general – A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not – (A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions,

and reporting requirements of this Act; or (B) solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in connection with such an election unless the funds – (i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of section 315(a); and (ii) are not from sources prohibited by this Act from making contributions in connection with an election for Federal office. (2) State law – Paragraph (1) does not apply to the solicitation, receipt, or spending of funds by an individual described in such paragraph who is or was also a candidate for a State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both. (3) Fundraising events – Notwithstanding paragraph (1) or subsection (b)(2)(C), a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party. . .

SEC. 103. REPORTING REQUIREMENTS

(a) Reporting Requirements – Section 304 of the Federal Election Campaign Act of 1971 is amended by adding at the end the following: (e) Political Committees – (1) National and congressional political committees – The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period. (2) Other political committees to which section 323 applies – (A) In general – In addition to any other reporting requirements applicable under this Act, a political committee (not described in paragraph (1)) to which section 323(b)(1) applies shall report all receipts and disbursements made for activities described in section 301(20)(A), unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000. (B) Specific disclosure by state and local parties of certain non-federal amounts permitted to be spent on federal election activity. – Each report by a political committee under subparagraph (A) of receipts and disbursements made for activities described in section 301(20)(A) shall include a disclosure of all receipts and disbursements described in section 323(b)(2)(A) and (B). (3) Itemization – If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3)(A), (5), and (6) of subsection (b). . .

SEC. 201. DISCLOSURE OF ELECTIONEERING COMMUNICATIONS

(a) In General – Section 304 of the Federal Election Campaign Act of 1971, as amended by section 103, is amended by adding at the end the following new subsection: (f) Disclosure of Electioneering Communications –

(1) Statement required. – Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

(2) Contents of statement. – Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information: (A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement. (B) The principal place of business of the person making the disbursement, if not an individual. (C) The amount of each disbursement of more than $200 during the period covered by the statement

and the identification of the person to whom the disbursement was made. (D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified. (E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. (F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(3) Electioneering communication – For purposes of this subsection – (A) In general – (i) The term 'electioneering communication' means any broadcast, cable, or satellite communication which – (I) refers to a clearly identified candidate for Federal office; (II) is made within – (aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or (bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate. (ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term 'electioneering communication' means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations. . .

SEC. 203. PROHIBITION OF CORPORATE AND LABOR DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS. . .

(c) Rules Relating to Electioneering Communications – (1) Applicable electioneering communication – For purposes of this section, the term 'applicable electioneering communication' means an electioneering communication which is made by any entity described in subsection (a) of this section or by any other person using funds donated by an entity described in subsection (a) of this section. (2) Exception. – Notwithstanding paragraph (1), the term 'applicable electioneering communication' does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) made under section 304(f)(2)(E) or (F) of this Act if the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence of the Immigration and Nationality Act. For purposes of the preceding sentence, the term 'provided directly by individuals' does not include funds the source of which is an entity described in subsection (a) of this section. (3) Special operating rules – (A) Definition under paragraph (1) – An electioneering communication shall be treated as made by an entity described in subsection (a) if an entity described in subsection (a) directly or indirectly disburses any amount for any of the costs of the communication. (B) Exception under paragraph (2) – A section 501(c)(4) organization that derives amounts from business activities or receives funds from

any entity described in subsection (a) shall be considered to have paid for any communication out of such amounts unless such organization paid for the communication out of a segregated account to which only individuals can contribute, as described in section 304(f)(2)(E). . .

SEC. 211. DEFINITION OF INDEPENDENT EXPENDITURE

Section 301 of the Federal Election Campaign Act is amended by striking paragraph (17) and inserting the following: (17) Independent expenditure – The term 'independent expenditure' means an expenditure by a person – (A) expressly advocating the election or defeat of a clearly identified candidate; and (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents. . .

SEC. 213. INDEPENDENT VERSUS COORDINATED EXPENDITURES BY PARTY. . .

(A) In general – On or after the date on which a political party nominates a candidate, no committee of the political party may make – (i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure with respect to the candidate during the election cycle; or (ii) any independent expenditure (as defined in section 301(17)) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle. (B) Application – For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee. (C) Transfers – A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.

SEC. 214. COORDINATION WITH CANDIDATES OR POLITICAL PARTIES

(a) In General – Section 315(a)(7)(B) of the Federal Election Campaign Act of 1971 is amended – (1) by redesignating clause (ii) as clause (iii); and (2) by inserting after clause (i) the following new clause: (ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee. . .

(c) Regulations by the Federal Election Commission. – The Federal Election Commission shall promulgate new regulations on coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees. The regulations shall not require agreement or formal collaboration to establish coordination. In addition to any subject determined by the Commission, the regulations shall address – (1) payments for the republication of campaign materials; (2) payments for the use of a common vendor; (3) payments for communications directed or made by persons who previously served as an employee of a candidate or a political party; and (4) payments for communications made by a person after substantial discussion about the communication with a candidate or a political party. . .

SEC. 313. USE OF CONTRIBUTED AMOUNTS FOR CERTAIN PURPOSES

(a) Permitted Uses. – A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual – (1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual; (2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office; (3) for contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986; or (4) for transfers, without limitation, to a national, State, or local committee of a political party.

(b) Prohibited Use – (1) In general. – A contribution or donation described in subsection (a) shall not be converted by any person to personal use. (2) Conversion – For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including – (A) a home mortgage, rent, or utility payment; (B) a clothing purchase; (C) a non-campaign-related automobile expense; (D) a country club membership; (E) a vacation or other non-campaign-related trip; (F) a household food item; (G) a tuition payment; (H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and (I) dues, fees, and other payments to a health club or recreational facility. . .

SEC. 303. STRENGTHENING FOREIGN MONEY BAN. . .

(a) Prohibition – It shall be unlawful for – (1) a foreign national, directly or indirectly, to make – (A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election; (B) a contribution or donation to a committee of a political party; or (C) an expenditure, independent expenditure, or disbursement for an electioneering communication; or (2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national. . .

SEC. 307. MODIFICATION OF CONTRIBUTION LIMITS

(a) Increase in Individual Limits for Certain Contributions – Section 315(a)(1) of the Federal Election Campaign Act of 1971 is amended – (1) in subparagraph (A), by striking "$1,000'' and inserting "$2,000''; and (2) in subparagraph (B), by striking "$20,000'' and inserting "$25,000''.

(b) Increase in Annual Aggregate Limit on Individual Contributions – Section 315(a)(3) of the Federal Election Campaign Act of 1971 is amended to read as follows: (3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than – (A) $37,500, in the case of contributions to candidates and the authorized committees of candidates; (B) $57,500, in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties.

(c) Increase in Senatorial Campaign Committee Limit – Section 315(h) of the Federal Election Campaign Act of 1971 is amended by striking "$17,500'' and inserting "$35,000''. . .

McConnell v. F.E.C.

540 U.S. 93 (2003)

The implementation of BCRA in 2002 was announced as a great success of American democracy, because the law was adopted with the votes of members of both political parties in Congress. The authors of the legislation argued that it addressed the most controversial effects of the Federal Election Campaign Act, which was the uncontrolled flow of soft money and growing impact of political action committees on the electoral process. As a matter of fact, during the congressional debates there were some critics on both sides of the political aisle, with Senator Mitch McConnell as the leading opponent of the new law. Therefore, there was no surprise when McConnell decided to challenge it and took the issue to the federal courts. Due to a special procedure designed in BCRA, the case was heard by a panel of three district judges, who found part of the legislation unconstitutional, and then the case was brought to the Supreme Court on appeal.

McConnell v. F.E.C. became the first (but not last) decision in which the highest court in the U.S. determined the constitutionality of various provisions of the Bipartisan Campaign Reform Act. McConnell challenged two restrictions implemented by the campaign finance law: the prohibition of using soft money for election campaigns, and broad limitations on political advertisements used for campaign purposes. In a narrow-margin decision, supported by liberal Justices and Sandra Day O'Connor, the Court upheld the challenged provisions of BCRA, arguing that the impact of campaign finance restrictions on the freedom of speech of contributors was not significant, and was justified by a compelling state interest. As a result, the regulations on soft money and electioneering communications remained in force, and the only part of BCRA which was struck down referred to limitations on political contributions by minorities. Four conservative justices strongly dissented from raising arguments of First Amendment protection of candidates and their contributors, thereby assuring that the clash of values between the left and right wings of the Court would dominate in its subsequent decisions in 2007, 2010 and 2013.

JUSTICE STEVENS and JUSTICE O'CONNOR delivered the opinion of the Court with respect to BCRA Titles I and II. . .

BCRA is the most recent federal enactment designed "to purge national politics of what was conceived to be the pernicious influence of 'big money' campaign contributions". . .

BCRA's central provisions are designed to address Congress' concerns about the increasing use of soft money and issue advertising to influence federal elections. Title I regulates the use of soft money by political parties, officeholders, and candidates. Title II primarily prohibits corporations and labor unions from using general treasury funds for communications that are intended to, or have the effect of, influencing the outcome of federal elections. . .

Title I is Congress' effort to plug the soft-money loophole. The cornerstone of Title I is new FECA §323(a), which prohibits national party committees and their agents from soliciting, receiving, directing, or spending any soft money. In short, §323(a) takes national parties out of the soft-money business. . .

Our treatment of contribution restrictions reflects more than the limited burdens they impose on First Amendment freedoms. It also reflects the importance of the interests that underlie contribution limits—interests in preventing "both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption." *National Right to Work,* see also *Federal Election Comm'n* v. *Colorado Republican Federal Campaign Comm. (Colorado II)*. We have said that these interests directly implicate " 'the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process.' " *National Right to Work*. Because the electoral process is the very "means through which a free society democratically translates political speech into concrete governmental action," *Shrink Missouri*, contribution limits, like other measures aimed at protecting the integrity of the process, tangibly benefit public participation in political debate. For that reason, when reviewing Congress' decision to enact contribution limits, "there is no place for a strong presumption against constitutionality, of the sort often thought to accompany the words 'strict scrutiny.'" The less rigorous standard of review we have applied to contribution limits (*Buckley*'s "closely drawn" scrutiny) shows proper deference to Congress' ability to weigh competing constitutional interests in an area in which it enjoys particular expertise. It also provides Congress with sufficient room to anticipate and respond to concerns about circumvention of regulations designed to protect the integrity of the political process. . .

[W]e apply the less rigorous scrutiny applicable to contribution limits to evaluate the constitutionality of new FECA §323. Because the five challenged provisions of §323 implicate different First Amendment concerns, we discuss them separately. We are mindful, however, that Congress enacted §323 as an integrated whole to vindicate the Government's important interest in preventing corruption and the appearance of corruption. . .

1. In our view. . . Congress is not required to ignore historical evidence regarding a particular practice or to view conduct in isolation from its context. To be sure, mere political favoritism or opportunity for influence alone is insufficient to justify regulation. As the record demonstrates, it is the manner in which parties have *sold* access to federal candidates and officeholders that has given rise to the appearance of undue influence. Implicit (and, as the record shows, sometimes explicit) in the sale of access is the suggestion that money buys influence. It is no surprise then that purchasers of such access unabashedly admit that they are seeking to purchase just such influence. It was not unwarranted for Congress to conclude that the selling of access gives rise to the appearance of corruption. In sum, there is substantial evidence to support Congress' determination that large soft-money contributions to national political parties give rise to corruption and the appearance of corruption. . .

2. Given the close connection and alignment of interests, large soft-money contributions to national parties are likely to create actual or apparent indebtedness on the part of federal officeholders, regardless of how those funds are ultimately used. This close affiliation has also placed national parties in a position to sell access to federal officeholders in exchange for soft-money contributions that the party can then use for its own purposes. Access to federal officeholders is the most valuable favor the national party committees are able to give in exchange for large donations. The fact that officeholders comply by donating their valuable time indicates either that officeholders place substantial value on the soft-money contribution themselves, without regard to their end use, or that national committees are able to exert considerable control over federal officeholders. . . Either way, large soft-money donations to national party committees are likely to buy donors preferential access to federal officeholders no matter the ends to which their contributions are eventually put. As discussed above, Congress had sufficient grounds to regulate the appearance of undue influence associated with this practice. The Government's strong interests in preventing corruption, and in particular the appearance of corruption, are thus sufficient to justify subjecting all donations to national parties to the source, amount, and disclosure limitations of FECA. . .

3. Plaintiffs argue that BCRA itself demonstrates the overbreadth of §323(a)'s solicitation ban. They point in particular to §323(e), which allows federal candidates and officeholders to solicit limited amounts of soft money from individual donors under certain circumstances. The differences between §§323(a) and 323(e), however, are without constitutional significance. We have recognized that "the 'differing structures and purposes' of different entities 'may require different forms of regulation in order to protect the integrity of the electoral process,'" *National Right to Work*, and we respect Congress' decision to proceed in incremental steps in the area of campaign finance regulation, see *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.; Buckley*. The differences between the two provisions reflect Congress' reasonable judgments about the function played by national committees and the interactions between committees and officeholders, subjects about which Members of Congress have vastly superior knowledge. . .

4. *In Buckley*, we rejected a similar argument concerning limits on contributions to minor-party candidates, noting that "any attempt to exclude minor parties and independents en masse from the Act's contribution limitations overlooks the fact that minor-party candidates may win elective office or have a substantial impact on the outcome of an election." We have thus recognized that the relevance of the interest in avoiding actual or apparent corruption is not a function of the number of legislators a given party manages to elect. It applies as much to a minor party that manages to elect only one of its members to federal office as it does to a major party whose members make up a majority of Congress. It is therefore reasonable to require that all parties and all candidates follow the same set of rules designed to protect the integrity of the electoral process. . .

5. Nothing on the face of §323(a) prohibits national party officers, whether acting in their official or individual capacities, from sitting down with state and local party committees or candidates to plan and advise how to raise and spend soft money. As long as the national party officer does not personally spend, receive, direct, or solicit soft money, §323(a) permits a wide range of joint planning and electioneering activity. Intervenor-defendants, the principal drafters and proponents of the legislation, concede as much. Brief for Intervenor-Defendants. . . The FEC's current definitions of §323(a)'s terms are consistent with that view. . . Given the straightforward meaning of this provision, Justice Kennedy is incorrect that "[a] national party's mere involvement in the strategic planning of fundraising for a state ballot initiative" or its assistance in developing a state party's Levin-money fundraising efforts risks a finding that the officers are in "'indirect control'" of the state party and subject to criminal penalties. Moreover, §323(a) leaves national party committee officers entirely free to participate, in their official capacities, with state and local parties and candidates in soliciting and spending hard money; party officials may also solicit soft money in their unofficial capacities.

Accordingly, we reject the plaintiffs' First Amendment challenge to new FECA §323(a). . .

Several plaintiffs contend that Title I exceeds Congress' Election Clause authority to "make or alter" rules governing federal elections, U. S. Const., Art. I, §4, and, by impairing the authority of the States to regulate their own elections, violates constitutional principles of federalism. In examining congressional enactments for infirmity under the Tenth Amendment, this Court has focused its attention on laws that commandeer the States and state officials in carrying out federal regulatory schemes. See *Printz* v. *United States*; *New York* v. *United States*. By contrast, Title I of BCRA only regulates the conduct of private parties. It imposes no requirements whatsoever upon States or state officials, and, because it does not expressly pre-empt state legislation, it leaves the States free to enforce their own restrictions on the financing of state electoral campaigns. It is true that Title I, as amended, prohibits some fundraising tactics that would otherwise be permitted under the laws of various States, and that it may therefore have an indirect effect on the financing of state electoral campaigns. But these indirect effects do not render BCRA unconstitutional. It is not uncommon for federal law to prohibit private conduct that is legal in some States. See, *e.g.*, *United States* v. *Oakland Cannabis Buyers' Cooperative*. Indeed, such conflict is inevitable in areas of law that involve both state and federal concerns. It is not in and of itself a marker of constitutional infirmity. See *Ex parte Siebold*.

Of course, in maintaining the federal system envisioned by the Founders, this Court has done more than just prevent Congress from commandeering the States. We have also policed the absolute boundaries of congressional power under Article I. See *United States* v. *Morrison; United States* v. *Lopez*. But plaintiffs offer no reason to believe that Congress has overstepped its Elections Clause power in enacting BCRA. Congress has a fully legitimate interest in maintaining the integrity of federal officeholders and preventing corruption of federal electoral processes through the means it has chosen. Indeed, our above analysis turns on our finding that those interests are sufficient to satisfy First Amendment scrutiny. Given that finding, we cannot conclude that those interests are insufficient to ground Congress' exercise of its Elections Clause power. See *Morrison*. . .

Finally, plaintiffs argue that Title I violates the equal protection component of the Due Process Clause of the Fifth Amendment because it discriminates against political parties in favor of special interest groups such as the National Rifle Association (NRA), American Civil Liberties Union (ACLU), and Sierra Club. As explained earlier, BCRA imposes numerous restrictions on the fundraising abilities of political parties, of which the soft-money ban is only the most prominent. Interest groups, however, remain free to raise soft money to fund voter registration, GOTV activities, mailings, and broadcast advertising (other than electioneering communications). We conclude that this disparate treatment does not offend the Constitution. . .

We held in *Buckley* that a $1,000 cap on expenditures that applied only to express advocacy could not be justified as a means of avoiding circumvention of contribution limits or preventing corruption and the appearance of corruption because its restrictions could easily be evaded: "So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views." The same is true in this litigation. Any claim that a restriction on independent express advocacy serves a strong Government interest is belied by the overwhelming evidence that the line between express advocacy and other types of election-influencing expression is, for Congress' purposes, functionally meaningless. Indeed, Congress enacted the new "electioneering communication[s]" provisions precisely because it recognized that the express advocacy test was woefully inadequate at capturing communications designed to influence candidate elections. In light of that recognition, we are hard pressed to conclude that any meaningful purpose is served by §315(d)(4)'s burden on a party's right to engage independently in express advocacy.

The Government argues that §315(d)(4) nevertheless is constitutional because it is not an outright ban (or cap) on independent expenditures, but rather offers parties a volun-

tary choice between a constitutional right and a statutory benefit. Whatever merit that argument might have in the abstract, it fails to account for new §315(d)(4)(B), which provides: "For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee."

Given that provision, it simply is not the case that each party committee can make a voluntary and independent choice between exercising its right to engage in independent advocacy and taking advantage of the increased limits on coordinated spending under §§315(d)(1)–(3). Instead, the decision resides solely in the hands of the first mover, such that a local party committee can bind both the state and national parties to its chosen spending option. It is one thing to say that Congress may require a party committee to give up its right to make independent expenditures if it believes that it can accomplish more with coordinated expenditures. It is quite another thing, however, to say that the RNC must limit itself to $5,000 in coordinated expenditures in support of its presidential nominee if any state or local committee first makes an independent expenditure for an ad that uses magic words. That odd result undermines any claim that new §315(d)(4) can withstand constitutional scrutiny simply because it is cast as a voluntary choice rather than an outright prohibition on independent expenditures. The portion of the judgment of the District Court invalidating BCRA §213 is affirmed. . .

Many years ago we observed that "[t]o say that Congress is without power to pass appropriate legislation to safeguard. . . an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection." *Burroughs* v. *United States*. We abide by that conviction in considering Congress' most recent effort to confine the ill effects of aggregated wealth on our political system. We are under no illusion that BCRA will be the last congressional statement on the matter. Money, like water, will always find an outlet. What problems will arise, and how Congress will respond, are concerns for another day. In the main we uphold BCRA's two principal, complementary features: the control of soft money and the regulation of electioneering communications. Accordingly, we affirm in part and reverse in part the District Court's judgment with respect to Titles I and II.

F.E.C. v. Wisconsin Right to Life

551 U.S. 489 (2007)

The *McConnell v. F.E.C.* decision upheld all the major provisions of the Bipartisan Campaign Reform Act, including those regarding the electioneering communications restrictions and the prohibition of those advertisements which directly promoted certain candidates for federal offices. Before the elections of 2004, the Wisconsin Right To Life corporation publicized three advertisements in which citizens were encouraged to try and influence U.S. Senators in their political activities concerning judicial nominations. According to BCRA, electioneering communications could not be presented less than 60 days before the election, which limited the possibility of the corporation to run their advertisement during that period. Wisconsin Right to Life challenged the law in the District Court, which agreed with their argumentation, and the case was appealed to the Supreme Court, which reached its verdict in 2007.

The organization argued that their ads referred to issues and not to direct advocacy of a candidate for federal office, whereas the Federal Election Commission stated that the controversial advertisements were aimed at influencing the results of the election. The Supreme Court supported Wisconsin Right to Life, construing a five-vote majority of conservative Justices (Sandra Day O'Connor was replaced in 2005 by Samuel Alito, who signed the majority decision). The Court agreed that the advertisements at stake promoted issues not candidates, and, therefore, did not violate the BCRA, whereas the prohibited advertisements had to leave no doubts as to the intent of the authors connected with the supporting of a concrete candidate. The Justices did not find any interest of the government in restricting the publication of advertisements which only indirectly referred to the conduct of federal election campaigns.

MR. JUSTICE ROBERTS announced the judgment of the Court. . .

> Section 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 91, 2 U. S. C. §441b(b)(2) (2000 ed., Supp. IV), makes it a federal crime for any corporation to broadcast, shortly before an election, any communication that names a federal candidate for elected office and is targeted to the electorate. In *McConnell* v. *Federal Election Comm'n*, this Court considered whether §203 was facially overbroad under the First Amendment because it captured within its reach not only campaign speech, or "express advocacy," but also speech about public issues more generally, or "issue advocacy," that mentions

a candidate for federal office. The Court concluded that there was no overbreadth concern to the extent the speech in question was the "functional equivalent" of express campaign speech. On the other hand, the Court "assume[d]" that the interests it had found to "justify the regulation of campaign speech might not apply to the regulation of genuine issue ads." The Court nonetheless determined that §203 was not facially overbroad. . .

We now confront such an as-applied challenge. Resolving it requires us first to determine whether the speech at issue is the "functional equivalent" of speech expressly advocating the election or defeat of a candidate for federal office, or instead a "genuine issue a[d]." *McConnell*. We have long recognized that the distinction between campaign advocacy and issue advocacy "may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions." *Buckley* v. *Valeo*. Our development of the law in this area requires us, however, to draw such a line, because we have recognized that the interests held to justify the regulation of campaign speech and its "functional equivalent" "might not apply" to the regulation of issue advocacy. *McConnell*.

In drawing that line, the First Amendment requires us to err on the side of protecting political speech rather than suppressing it. We conclude that the speech at issue in this as-applied challenge is not the "functional equivalent" of express campaign speech. We further conclude that the interests held to justify restricting corporate campaign speech or its functional equivalent do not justify restricting issue advocacy, and accordingly we hold that BCRA §203 is unconstitutional as applied to the advertisements at issue in these cases. . .

WRTL rightly concedes that its ads are prohibited by BCRA §203. Each ad clearly identifies Senator Feingold, who was running (unopposed) in the Wisconsin Democratic primary on September 14, 2004, and each ad would have been "targeted to the relevant electorate," see 2 U. S. C. §434(f)(3)(C), during the BCRA blackout period. WRTL further concedes that its ads do not fit under any of BCRA's exceptions to the term "electioneering communication." See §434(f)(3)(B). The only question, then, is whether it is consistent with the First Amendment for BCRA §203 to prohibit WRTL from running these three ads.

Appellants contend that WRTL should be required to demonstrate that BCRA is unconstitutional as applied to the ads. After all, appellants reason, *McConnell* already held that BCRA §203 was facially valid. These cases, however, present the separate question whether §203 may constitutionally be applied to these specific ads. Because BCRA §203 burdens political speech, it is subject to strict scrutiny. See *McConnell*, *Austin* v. *Michigan Chamber of Commerce*, *MCFL*, *Bellotti*, *Buckley*. Under strict scrutiny, the *Government* must prove that applying BCRA to WRTL's ads furthers a compelling interest and is narrowly tailored to achieve that interest. . . The strict scrutiny analysis is, of course, informed by our precedents. This Court has already ruled that BCRA survives strict scrutiny to the extent it regulates express advocacy or its functional equivalent. *McConnell*, So to the extent the ads in these cases fit this description, the FEC's burden is not onerous; all it need do is point to *McConnell* and explain why it applies here. If, on the other hand, WRTL's ads are *not* express advocacy or its equivalent, the Government's task is more formidable. It must then demonstrate that banning such ads during the blackout periods is narrowly tailored to serve a compelling interest. No precedent of this Court has yet reached that conclusion. . .

When the *McConnell* Court considered the possible facial overbreadth of §203, it looked to the studies in the record analyzing ads broadcast during the blackout periods, and those studies had classified the ads in terms of intent and effect. The Court's assessment was accordingly phrased in the same terms, which the Court regarded as sufficient to conclude, on the record before it, that the plaintiffs had not "carried their heavy burden of proving" that §203 was facially overbroad and could not be enforced in *any* circumstances. The Court did not explain that it was adopting a particular test for determining what constituted the "functional equivalent" of express advocacy. The fact that the student coders who helped develop the evidentiary record before the Court in *McConnell* looked

to intent and effect in doing so, and that the Court dealt with the record on that basis in deciding the facial overbreadth claim, neither compels nor warrants accepting that same standard as the constitutional test for separating, in an as-applied challenge, political speech protected under the First Amendment from that which may be banned.

More importantly, this Court in *Buckley* had already rejected an intent-and-effect test for distinguishing between discussions of issues and candidates. After noting the difficulty of distinguishing between discussion of issues on the one hand and advocacy of election or defeat of candidates on the other, the *Buckley* Court explained that analyzing the question in terms "'of intent and of effect'" would afford "'no security for free discussion.'" It therefore rejected such an approach, and *McConnell* did not purport to overrule *Buckley* on this point—or even address what *Buckley* had to say on the subject.

For the reasons regarded as sufficient in *Buckley*, we decline to adopt a test for as-applied challenges turning on the speaker's intent to affect an election. The test to distinguish constitutionally protected political speech from speech that BCRA may proscribe should provide a safe harbor for those who wish to exercise First Amendment rights. The test should also "reflec[t] our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.' " *Buckley*. A test turning on the intent of the speaker does not remotely fit the bill.

Far from serving the values the First Amendment is meant to protect, an intent-based test would chill core political speech by opening the door to a trial on every ad within the terms of §203, on the theory that the speaker actually intended to affect an election, no matter how compelling the indications that the ad concerned a pending legislative or policy issue. No reasonable speaker would choose to run an ad covered by BCRA if its only defense to a criminal prosecution would be that its motives were pure. An intent-based standard "blankets with uncertainty whatever may be said," and "offers no security for free discussion." *Buckley*. The FEC does not disagree. In its brief filed in the first appeal in this litigation, it argued that a "constitutional standard that turned on the subjective sincerity of a speaker's message would likely be incapable of workable application; at a minimum, it would invite costly, fact-dependent litigation". . .

"The freedom of speech . . . guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment." *Bellotti*. . . To safeguard this liberty, the proper standard for an as-applied challenge to BCRA §203 must be objective, focusing on the substance of the communication rather than amorphous considerations of intent and effect. See *Buckley*. It must entail minimal if any discovery, to allow parties to resolve disputes quickly without chilling speech through the threat of burdensome litigation. See *Virginia* v. *Hicks*. And it must eschew "the open-ended rough-and-tumble of factors," which "invit[es] complex argument in a trial court and a virtually inevitable appeal." *Jerome B. Grubart, Inc.* v. *Great Lakes Dredge & Dock Co*. In short, it must give the benefit of any doubt to protecting rather than stifling speech. See *New York Times Co.* v. *Sullivan*.

In light of these considerations, a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. Under this test, WRTL's three ads are plainly not the functional equivalent of express advocacy. First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office. . .

Looking beyond the content of WRTL's ads, the FEC and intervenors argue that several "contextual" factors prove that the ads are the equivalent of express advocacy. First, appellants cite evidence that during the same election cycle, WRTL and its Political Action

Committee (PAC) actively opposed Senator Feingold's reelection and identified filibusters as a campaign issue. This evidence goes to WRTL's subjective intent in running the ads, and we have already explained that WRTL's intent is irrelevant in an as-applied challenge. Evidence of this sort is therefore beside the point, as it should be—WRTL does not forfeit its right to speak on issues simply because in other aspects of its work it also opposes candidates who are involved with those issues.

Next, the FEC and intervenors seize on the timing of WRTL's ads. They observe that the ads were to be aired near elections but not near actual Senate votes on judicial nominees, and that WRTL did not run the ads after the elections. To the extent this evidence goes to WRTL's subjective intent, it is again irrelevant. To the extent it nonetheless suggests that the ads should be interpreted as express advocacy, it falls short. That the ads were run close to an election is unremarkable in a challenge like this. *Every* ad covered by BCRA §203 will by definition air just before a primary or general election. If this were enough to prove that an ad is the functional equivalent of express advocacy, then BCRA would be constitutional in all of its applications. This Court unanimously rejected this contention in *WRTL I*.

That the ads were run shortly after the Senate had recessed is likewise unpersuasive. Members of Congress often return to their districts during recess, precisely to determine the views of their constituents; an ad run at that time may succeed in getting more constituents to contact the Representative while he or she is back home. In any event, a group can certainly choose to run an issue ad to coincide with public interest rather than a floor vote. Finally, WRTL did not resume running its ads after the BCRA blackout period because, as it explains, the debate had changed. The focus of the Senate was on whether a majority would vote to change the Senate rules to eliminate the filibuster—not whether individual Senators would continue filibustering. Given this change, WRTL's decision not to continue running its ads after the blackout period does not support an inference that the ads were the functional equivalent of electioneering. . .

Because WRTL's ads may reasonably be interpreted as something other than as an appeal to vote for or against a specific candidate, we hold they are not the functional equivalent of express advocacy, and therefore fall outside the scope of *McConnell*'s holding. . .

This Court has long recognized "the governmental interest in preventing corruption and the appearance of corruption" in election campaigns. *Buckley*. This interest has been invoked as a reason for upholding *contribution* limits. As *Buckley* explained, "[t]o the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined." We have suggested that this interest might also justify limits on electioneering *expenditures* because it may be that, in some circumstances, "large independent expenditures pose the same dangers of actual or apparent *quid pro quo* arrangements as do large contributions."

McConnell arguably applied this interest—which this Court had only assumed could justify regulation of express advocacy—to ads that were the "functional equivalent" of express advocacy. But to justify regulation of WRTL's ads, this interest must be stretched yet another step to ads that are *not* the functional equivalent of express advocacy. Enough is enough. Issue ads like WRTL's are by no means equivalent to contributions, and the *quid-pro-quo* corruption interest cannot justify regulating them. To equate WRTL's ads with contributions is to ignore their value as political speech. . .

A second possible compelling interest recognized by this Court lies in addressing a "different type of corruption in the political arena: the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." *Austin*. *Austin* invoked this interest to uphold a state statute making it a felony for corporations to use treasury funds for independent expenditures on express election advocacy. *McConnell* also relied on this interest in upholding regulation not just of express advocacy, but also its "functional equivalent."

These cases did not suggest, however, that the interest in combating "a different type of corruption" extended beyond campaign speech. Quite the contrary. Two of the Justices who joined the 6-to-3 majority in *Austin* relied, in upholding the constitutionality of the ban on campaign speech, on the fact that corporations retained freedom to speak on issues as distinct from election campaigns . . . The *McConnell* Court similarly was willing to "assume that the interests that justify the regulation of campaign speech might not apply to the regulation of genuine issue ads." And our decision in *WRTL I* reinforced the validity of that assumption by holding that BCRA §203 is susceptible to as-applied challenges.

Accepting the notion that a ban on campaign speech could also embrace issue advocacy would call into question our holding in *Bellotti* that the corporate identity of a speaker does not strip corporations of all free speech rights. It would be a constitutional "bait and switch" to conclude that corporate campaign speech may be banned in part *because* corporate issue advocacy is not, and then assert that corporate issue advocacy may be banned as well, pursuant to the same asserted compelling interest, through a broad conception of what constitutes the functional equivalent of campaign speech, or by relying on the inability to distinguish campaign speech from issue advocacy. The FEC and intervenors do not argue that the *Austin* interest justifies regulating genuine issue ads. Instead, they focus on establishing that WRTL's ads are the functional equivalent of express advocacy—a contention we have already rejected. We hold that the interest recognized in *Austin* as justifying regulation of corporate campaign speech and extended in *McConnell* to the functional equivalent of such speech has no application to issue advocacy of the sort engaged in by WRTL.

Because WRTL's ads are not express advocacy or its functional equivalent, and because appellants identify no interest sufficiently compelling to justify burdening WRTL's speech, we hold that BCRA §203 is unconstitutional as applied to WRTL's "Wedding," "Loan," and "Waiting" ads.

These cases are about political speech. The importance of the cases to speech and debate on public policy issues is reflected in the number of diverse organizations that have joined in supporting WRTL before this Court: the American Civil Liberties Union, the National Rifle Association, the American Federation of Labor and Congress of Industrial Organizations, the Chamber of Commerce of the United States of America, Focus on the Family, the Coalition of Public Charities, the Cato Institute, and many others.

Yet, as is often the case in this Court's First Amendment opinions, we have gotten this far in the analysis without quoting the Amendment itself: "Congress shall make no law . . . abridging the freedom of speech." The Framers' actual words put these cases in proper perspective. Our jurisprudence over the past 216 years has rejected an absolutist interpretation of those words, but when it comes to drawing difficult lines in the area of pure political speech—between what is protected and what the Government may ban—it is worth recalling the language we are applying. *McConnell* held that express advocacy of a candidate or his opponent by a corporation shortly before an election may be prohibited, along with the functional equivalent of such express advocacy. We have no occasion to revisit that determination today. But when it comes to defining what speech qualifies as the functional equivalent of express advocacy subject to such a ban—the issue we *do* have to decide—we give the benefit of the doubt to speech, not censorship. The First Amendment's command that "Congress shall make no law. . . abridging the freedom of speech" demands at least that.

Davis v. F.E.C.

554 U.S. 724 (2008)

Just one year after the *Wisconsin Right to Life* decision, the Supreme Court came across another dispute concerning the constitutionality of the Bipartisan Campaign Reform Act. The issue referred to section 319(b) of the legislation, called the 'Millionaire's Amendment', which imposed special exceptions to contribution limits made by certain candidates in federal elections. The law demanded special information before the electoral process from candidates who planned to spend more than $350,000 from their own funds, which, in turn, provided the possibility to their opponents of increasing campaign spending, by allowing them to raise the donation limits they could accept from individual contributors and their national political party. A millionaire, Jack Davis, a Republican turned Democrat, challenged the BCRA provision, arguing that it violated his rights provided by the First and Fifth Amendments to the Constitution.

The Supreme Court decided *Davis v. F.E.C.* on appeal in 2008. Five conservative Justices reached similar conclusions as to the scope of the freedom of speech of candidates in federal elections, stating that Davis' financial status put him in an unequal position relative to his opponents in the congressional race. In the majority opinion, Justice Samuel Alito declared that the First Amendment was created in order to promote the free exchange of opinions, with no regard to the material status of the speaker. For liberals on the Court, it was obvious that the 'Millionaire's Amendment' was implemented in order to protect the system from the uncontrolled flow of big money into the electoral process, and to pursue the idea of the equalization of chances to be heard by non-wealthy candidates. This was now held unconstitutional by the conservative majority on the Court.

MR. JUSTICE ALITO delivered the opinion of the Court. . .

> We turn to the merits of Davis' claim that the First Amendment is violated by the contribution limits that apply when §319(a) [Millionaire's Amendment] comes into play. Under this scheme, as previously noted, when a candidate spends more than $350,000 in personal funds and creates what the statute apparently regards as a financial imbalance, that candidate's opponent may qualify to receive both larger individual contributions than would otherwise be allowed and unlimited coordinated party expenditures. Davis contends that §319(a) unconstitutionally burdens his exercise of his First Amendment right to make unlimited expenditures of his personal funds because making expenditures that create

the imbalance has the effect of enabling his opponent to raise more money and to use that money to finance speech that counteracts and thus diminishes the effectiveness of Davis' own speech.

If §319(a) simply raised the contribution limits for all candidates, Davis' argument would plainly fail. This Court has previously sustained the facial constitutionality of limits on discrete and aggregate individual contributions and on coordinated party expenditures. *Buckley* v. *Valeo*, *Federal Election Comm'n* v. *Colorado Republican Federal Campaign Comm*. *(Colorado II)*. At the same time, the Court has recognized that such limits implicate interests and that they cannot stand unless they are "closely drawn" to serve a "sufficiently important interest," such as preventing corruption and the appearance of corruption. See, *e.g., McConnell* v. *Federal Election Comm'n*, *Colorado II*; *Nixon* v. *Shrink Missouri Government PAC*; *Buckley*. When contribution limits are challenged as too restrictive, we have extended a measure of deference to the judgment of the legislative body that enacted the law. See, *e.g., Randall* v. *Sorrell*, *Nixon*; *Buckley*. But we have held that limits that are too low cannot stand. *Randall.*

There is, however, no constitutional basis for attacking contribution limits on the ground that they are too high. Congress has no constitutional obligation to limit contributions at all; and if Congress concludes that allowing contributions of a certain amount does not create an undue risk of corruption or the appearance of corruption, a candidate who wishes to restrict an opponent's fundraising cannot argue that the Constitution demands that contributions be regulated more strictly. Consequently, if §319(a)'s elevated contribution limits applied across the board, Davis would not have any basis for challenging those limits.

Section 319(a), however, does not raise the contribution limits across the board. Rather, it raises the limits only for the non-self-financing candidate and does so only when the self-financing candidate's expenditure of personal funds causes the OPFA threshold to be exceeded. We have never upheld the constitutionality of a law that imposes different contribution limits for candidates who are competing against each other, and we agree with Davis that this scheme impermissibly burdens his First Amendment right to spend his own money for campaign speech.

In *Buckley*, we soundly rejected a cap on a candidate's expenditure of personal funds to finance campaign speech. We held that a "candidate. . . has a First Amendment right to engage in the discussion of public issues and vigorously and tirelessly to advocate his own election" and that a cap on personal expenditures imposes "a substantial," "clea[r]" and "direc[t]" restraint on that right. We found that the cap at issue was not justified by "[t]he primary governmental interest" proffered in its defense, *i.e.*, "the prevention of actual and apparent corruption of the political process." Far from preventing these evils, "the use of personal funds," we observed, "reduces the candidate's dependence on outside contributions and thereby counteracts the coercive pressures and attendant risks of abuse to which . . . contribution limitations are directed." *Ibid.* We also rejected the argument that the expenditure cap could be justified on the ground that it served "[t]he ancillary interest in equalizing the relative financial resources of candidates competing for elective office." This putative interest, we noted, was "clearly not sufficient to justify the. . . infringement of fundamental First Amendment rights."

Buckley's emphasis on the fundamental nature of the right to spend personal funds for campaign speech is instructive. While BCRA does not impose a cap on a candidate's expenditure of personal funds, it imposes an unprecedented penalty on any candidate who robustly exercises that First Amendment right. Section 319(a) requires a candidate to choose between the First Amendment right to engage in unfettered political speech and subjection to discriminatory fundraising limitations. Many candidates who can afford to make large personal expenditures to support their campaigns may choose to do so despite §319(a), but they must shoulder a special and potentially significant burden if they make that choice. See *Day* v. *Holahan*. . . Under §319(a), the vigorous exercise of the right to use personal funds to finance campaign speech produces fundraising advantages for

opponents in the competitive context of electoral politics. Cf. *Pacific Gas & Elec. Co.* v. *Public Util. Comm'n of Cal.*

The resulting drag on First Amendment rights is not constitutional simply because it attaches as a consequence of a statutorily imposed choice. In *Buckley*, we held that Congress "may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations" even though we found an independent limit on overall campaign expenditures to be unconstitutional. But the choice involved in *Buckley* was quite different from the choice imposed by §319(a). In *Buckley,* a candidate, by forgoing public financing, could retain the unfettered right to make unlimited personal expenditures. Here, §319(a) does not provide any way in which a candidate can exercise that right without abridgment. Instead, a candidate who wishes to exercise that right has two choices: abide by a limit on personal expenditures or endure the burden that is placed on that right by the activation of a scheme of discriminatory contribution limits. The choice imposed by §319(a) is not remotely parallel to that in *Buckley*.

Because §319(a) imposes a substantial burden on the exercise of the First Amendment right to use personal funds for campaign speech, that provision cannot stand unless it is "justified by a compelling state interest," *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*; see also, *e.g.*, *McConnell, Austin* v. *Michigan Chamber of Commerce*, *Federal Election Comm'n* v. *National Conservative Political Action Comm*. *First Nat. Bank of Boston* v. *Bellotti*, *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*. No such justification is present here.

The burden imposed by §319(a) on the expenditure of personal funds is not justified by any governmental interest in eliminating corruption or the perception of corruption. The *Buckley* Court reasoned that reliance on personal funds *reduces* the threat of corruption, and therefore §319(a), by discouraging use of personal funds, disserves the anticorruption interest. Similarly, given Congress' judgment that liberalized limits for non-self-financing candidates do not unduly imperil anticorruption interests, it is hard to imagine how the denial of liberalized limits to self-financing candidates can be regarded as serving anticorruption goals sufficiently to justify the resulting constitutional burden.

The Government maintains that §319(a)'s asymmetrical limits are justified because they "level electoral opportunities for candidates of different personal wealth." "Congress enacted Section 319," the Government writes," "to reduce *the natural advantage* that wealthy individuals possess in campaigns for federal office." Our prior decisions, however, provide no support for the proposition that this is a legitimate government objective. See *Nixon, Randall.* On the contrary, in *Buckley,* we held that "[t]he interest in equalizing the financial resources of candidates" did not provide a "justification for restricting" candidates' overall campaign expenditures, particularly where equalization "might serve. . . to handicap a candidate who lacked substantial name recognition or exposure of his views before the start of the campaign." We have similarly held that the interest "in equalizing the relative ability of individuals and groups to influence the outcome of elections" cannot support a cap on expenditures for "express advocacy of the election or defeat of candidates," as "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment". . .

The argument that a candidate's speech may be restricted in order to "level electoral opportunities" has ominous implications because it would permit Congress to arrogate the voters' authority to evaluate the strengths of candidates competing for office. See *Bellotti.* Different candidates have different strengths. Some are wealthy; others have wealthy supporters who are willing to make large contributions. Some are celebrities; some have the benefit of a well-known family name. Leveling electoral opportunities means making and implementing judgments about which strengths should be permitted to contribute to the outcome of an election. The Constitution, however, confers upon voters, not Congress, the power to choose the Members of the House of Representatives,

Art. I. §2, and it is a dangerous business for Congress to use the election laws to influence the voters' choices. See *Bellotti*.

Finally, the Government contends that §319(a) is justified because it ameliorates the deleterious effects that result from the tight limits that federal election law places on individual campaign contributions and coordinated party expenditures. These limits, it is argued, make it harder for candidates who are not wealthy to raise funds and therefore provide a substantial advantage for wealthy candidates. Accordingly, §319(a) can be seen, not as a legislative effort to interfere with the natural operation of the electoral process, but as a legislative effort to mitigate the untoward consequences of Congress' own handiwork and restore "the normal relationship between a candidate's financial resources and the level of popular support for his candidacy."

Whatever the merits of this argument as an original matter, it is fundamentally at war with the analysis of expenditure and contributions limits that this Court adopted in *Buckley* and has applied in subsequent cases. The advantage that wealthy candidates now enjoy and that §319(a) seeks to reduce is an advantage that flows directly from *Buckley*'s disparate treatment of expenditures and contributions. If that approach is sound—and the Government does not urge us to hold otherwise—it is hard to see how undoing the consequences of that decision can be viewed as a compelling interest. If the normally applicable limits on individual contributions and coordinated party contributions are seriously distorting the electoral process, if they are feeding a "public perception that wealthy people can buy seats in Congress," and if those limits are not needed in order to combat corruption, then the obvious remedy is to raise or eliminate those limits. But the unprecedented step of imposing different contribution and coordinated party expenditure limits on candidates vying for the same seat is antithetical to the First Amendment.

Citizens United v. F.E.C.

558 U.S. 310 (2010)

Although the *F.E.C. v. Wisconsin Right to Life* decision did not invalidate major pieces of federal campaign finance legislation, it revealed the opinions of particular Justices of the Supreme Court on the scope of the regulation of money in the electoral process. With five conservatives and four liberals, it seemed just a matter of time before the next challenge to the Bipartisan Campaign Reform Act regulations would enter the Court's docket. The discussion on the proper scope of expenditure limits or disclosure procedures was also present during legislative debates, but after BCRA the majority of Congressmen were reluctant to propose new legislation. Therefore, any changes to the meaning of campaign finance could be made by the judiciary as part of the process of the constitutional interpretation of money in the electoral process. Such a possibility occurred in connection with events that took place during the primary phase of the 2008 presidential elections, when a conservative corporation – Citizens United – was prevented from publicizing a movie concerning the suitability of Democratic candidate Hillary Clinton as a future president. The organization challenged the provisions of BCRA regarding electioneering communications, which were the source of limitations on the broadcast of a politically-oriented movie, arguing that their freedom of speech guarantees were violated by the legislation. The District Court denied the arguments of Citizens United, so the corporation appealed to the Supreme Court, which reached its decision in 2010.

Apart from the main issue raised by Citizens United about the constitutionality of regulations on electioneering communications, the Court recognized other important aspects of the Bipartisan Campaign Reform Act, which should be interpreted in accordance with the constitution, such as the scope of disclosure procedures, the role of campaign contributions as political speech, and, above all, the correctness of the *McConnell* holding. Five conservative Justices made the majority, underlining the democratic values of freedom of speech, especially referring to corporate communications and contributions in election campaigns, which constituted political speech. The majority acknowledged no difference between funding by individuals and corporations, which had to be protected in order to pursue the ideals of rule of law and democracy. As a result, Citizens United's movie was subject to BCRA's restrictions on diclosure, which were upheld also on the basis of the First Amendment's guarantees of freedom to the information necessary to pursue the goals of the electoral process. Liberal Justices opposed such an approach, declaring that corporations' activities in connection with the election campaigns should

be limited, as the main role of the government was to protect the flow of big money into the electoral process. The *Citizens United v. F.E.C.* decision was criticized by many liberal politicians and organizations as a threat to American democracy and, following a statement from Barack Obama, became the first ever Supreme Court precedent to be openly critized by a U.S. president during the State of the Union Address.

MR. JUSTICE KENNEDY delivered the opinion of the Court. . .

Before the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibited—and still does prohibit—corporations and unions from using general treasury funds to make direct contributions to candidates or independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections. 2 U. S. C. §441b; see *McConnell, Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*. BCRA §203 amended §441b to prohibit any "electioneering communication" as well. 2 U. S. C. §441b(b)(2). An electioneering communication is defined as "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary or 60 days of a general election. §434(f)(3)(A). The Federal Election Commission's (FEC) regulations further define an electioneering communication as a communication that is "publicly distributed." 11 CFR §100.29(a)(2) (2009). "In the case of a candidate for nomination for President. . . *publicly distributed* means" that the communication "[c] an be received by 50,000 or more persons in a State where a primary election. . . is being held within 30 days." §100.29(b)(3)(ii). Corporations and unions are barred from using their general treasury funds for express advocacy or electioneering communications. They may establish, however, a "separate segregated fund" (known as a political action committee, or PAC) for these purposes. 2 U. S. C. §441b(b)(2). The moneys received by the segregated fund are limited to donations from stockholders and employees of the corporation or, in the case of unions, members of the union.

Citizens United contends that §441b does not cover *Hillary*, as a matter of statutory interpretation, because the film does not qualify as an "electioneering communication." §441b(b)(2). Citizens United raises this issue for the first time before us, but we consider the issue because "it was addressed by the court below." *Lebron* v. *National Railroad Passenger Corporation*. Under the definition of electioneering communication, the video-on-demand showing of *Hillary* on cable television would have been a "cable. . . communication" that "refer[red] to a clearly identified candidate for Federal office" and that was made within 30 days of a primary election. Citizens United, however, argues that *Hillary* was not "publicly distributed," because a single video-on-demand transmission is sent only to a requesting cable converter box and each separate transmission, in most instances, will be seen by just one household—not 50,000 or more persons.

This argument ignores the regulation's instruction on how to determine whether a cable transmission "[c]an be received by 50,000 or more persons." §100.29(b)(3)(ii). The regulation provides that the number of people who can receive a cable transmission is determined by the number of cable subscribers in the relevant area. Here, Citizens United wanted to use a cable video-on-demand system that had 34.5 million subscribers nationwide.. Thus, *Hillary* could have been received by 50,000 persons or more. . .

In our view, the statute cannot be saved by limiting the reach of 2 U. S. C. §441b through this suggested interpretation. In addition to the costs and burdens of litigation, this result would require a calculation as to the number of people a particular communication is likely to reach, with an inaccurate estimate potentially subjecting the speaker to criminal sanctions. The First Amendment does not permit laws that force speakers to retain

a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day. Prolix laws chill speech for the same reason that vague laws chill speech: People "of common intelligence must necessarily guess at [the law's] meaning and differ as to its application." *Connally* v. *General Constr. Co*. The Government may not render a ban on political speech constitutional by carving out a limited exemption through an amorphous regulatory interpretation. We must reject the approach suggested by the *amici*. Section 441b covers *Hillary*.

Citizens United next argues that §441b may not be applied to *Hillary* under the approach taken in *WRTL*. *McConnell* decided that §441b(b)(2)'s definition of an "electioneering communication" was facially constitutional insofar as it restricted speech that was "the functional equivalent of express advocacy" for or against a specific candidate. *WRTL* then found an unconstitutional application of §441b where the speech was not "express advocacy or its functional equivalent". . .

Under this test, *Hillary* is equivalent to express advocacy. The movie, in essence, is a feature-length negative advertisement that urges viewers to vote against Senator Clinton for President. In light of historical footage, interviews with persons critical of her, and voiceover narration, the film would be understood by most viewers as an extended criticism of Senator Clinton's character and her fitness for the office of the Presidency. The narrative may contain more suggestions and arguments than facts, but there is little doubt that the thesis of the film is that she is unfit for the Presidency. The movie concentrates on alleged wrongdoing during the Clinton administration, Senator Clinton's qualifications and fitness for office, and policies the commentators predict she would pursue if elected President. . .

Citizens United argues that *Hillary* is just "a documentary film that examines certain historical events." We disagree. The movie's consistent emphasis is on the relevance of these events to Senator Clinton's candidacy for President. The narrator begins by asking "could [Senator Clinton] become the first female President in the history of the United States?" And the narrator reiterates the movie's message in his closing line: "Finally, before America decides on our next president, voters should need no reminders of . . . what's at stake—the well being and prosperity of our nation."

As the District Court found, there is no reasonable interpretation of *Hillary* other than as an appeal to vote against Senator Clinton. Under the standard stated in *McConnell* and further elaborated in *WRTL*, the film qualifies as the functional equivalent of express advocacy. . .

As noted above, Citizens United's narrower arguments are not sustainable under a fair reading of the statute. In the exercise of its judicial responsibility, it is necessary then for the Court to consider the facial validity of §441b. Any other course of decision would prolong the substantial, nation-wide chilling effect caused by §441b's prohibitions on corporate expenditures. Consideration of the facial validity of §441b is further supported by the following reasons.

First is the uncertainty caused by the litigating position of the Government. As discussed above, the Government suggests, as an alternative argument, that an as-applied challenge might have merit. This argument proceeds on the premise that the nonprofit corporation involved here may have received only *de minimis* donations from for-profit corporations and that some nonprofit corporations may be exempted from the operation of the statute. The Government also suggests that an as-applied challenge to §441b's ban on books may be successful, although it would defend §441b's ban as applied to almost every other form of media including pamphlets. The Government thus, by its own position, contributes to the uncertainty that §441b causes. When the Government holds out the possibility of ruling for Citizens United on a narrow ground yet refrains from adopting that position, the added uncertainty demonstrates the necessity to address the question of statutory validity.

Second, substantial time would be required to bring clarity to the application of the statutory provision on these points in order to avoid any chilling effect caused by some

improper interpretation. It is well known that the public begins to concentrate on elections only in the weeks immediately before they are held. There are short timeframes in which speech can have influence. The need or relevance of the speech will often first be apparent at this stage in the campaign. The decision to speak is made in the heat of political campaigns, when speakers react to messages conveyed by others. A speaker's ability to engage in political speech that could have a chance of persuading voters is stifled if the speaker must first commence a protracted lawsuit. By the time the lawsuit concludes, the election will be over and the litigants in most cases will have neither the incentive nor, perhaps, the resources to carry on, even if they could establish that the case is not moot because the issue is "capable of repetition, yet evading review." *WRTL*, *Southern Pacific Terminal Co.* v. *ICC*. Here, Citizens United decided to litigate its case to the end. Today, Citizens United finally learns, two years after the fact, whether it could have spoken during the 2008 Presidential primary—long after the opportunity to persuade primary voters has passed.

Third is the primary importance of speech itself to the integrity of the election process. As additional rules are created for regulating political speech, any speech arguably within their reach is chilled. Campaign finance regulations now impose "unique and complex rules" on "71 distinct entities." These entities are subject to separate rules for 33 different types of political speech. The FEC has adopted 568 pages of regulations, 1,278 pages of explanations and justifications for those regulations, and 1,771 advisory opinions since 1975. In fact, after this Court in *WRTL* adopted an objective "appeal to vote" test for determining whether a communication was the functional equivalent of express advocacy, the FEC adopted a two-part, 11-factor balancing test to implement *WRTL*'s ruling.

The ongoing chill upon speech that is beyond all doubt protected makes it necessary in this case to invoke the earlier precedents that a statute which chills speech can and must be invalidated where its facial invalidity has been demonstrated. See *WRTL*, *Thornhill* v. *Alabama*. For these reasons we find it necessary to reconsider *Austin*.

The First Amendment provides that "Congress shall make no law. . . abridging the freedom of speech."

. . .The law before us is an outright ban, backed by criminal sanctions. Section 441b makes it a felony for all corporations—including nonprofit advocacy corporations—either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election. Thus, the following acts would all be felonies under §441b: The Sierra Club runs an ad, within the crucial phase of 60 days before the general election, that exhorts the public to disapprove of a Congressman who favors logging in national forests; the National Rifle Association publishes a book urging the public to vote for the challenger because the incumbent U.S. Senator supports a handgun ban; and the American Civil Liberties Union creates a Web site telling the public to vote for a Presidential candidate in light of that candidate's defense of free speech. These prohibitions are classic examples of censorship.

Section 441b is a ban on corporate speech notwithstanding the fact that a PAC created by a corporation can still speak. See *McConnell*. A PAC is a separate association from the corporation. So the PAC exemption from §441b's expenditure ban, §441b(b)(2), does not allow corporations to speak. Even if a PAC could somehow allow a corporation to speak—and it does not—the option to form PACs does not alleviate the First Amendment problems with §441b. PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations. For example, every PAC must appoint a treasurer, forward donations to the treasurer promptly, keep detailed records of the identities of the persons making donations, preserve receipts for three years, and file an organization statement and report changes to this information within 10 days.

And that is just the beginning. PACs must file detailed monthly reports with the FEC, which are due at different times depending on the type of election that is about to occur. . . PACs

have to comply with these regulations just to speak. This might explain why fewer than 2,000 of the millions of corporations in this country have PACs. . . Given the onerous restrictions, a corporation may not be able to establish a PAC in time to make its views known regarding candidates and issues in a current campaign.

Section 441b's prohibition on corporate independent expenditures is thus a ban on speech. As a "restriction on the amount of money a person or group can spend on political communication during a campaign," that statute "necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." *Buckley* v. *Valeo*. Were the Court to uphold these restrictions, the Government could repress speech by silencing certain voices at any of the various points in the speech process. See *McConnell*. If §441b applied to individuals, no one would believe that it is merely a time, place, or manner restriction on speech. Its purpose and effect are to silence entities whose voices the Government deems to be suspect.

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. See *Buckley*. The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment " 'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Eu* v. *San Francisco County Democratic Central Comm.*, see *Buckley.*

For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are "subject to strict scrutiny," which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *WRTL.* While it might be maintained that political speech simply cannot be banned or restricted as a categorical matter, see *Simon & Schuster*, the quoted language from *WRTL* provides a sufficient framework for protecting the relevant First Amendment interests in this case. We shall employ it here.

Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. See, *e.g., United States* v. *Playboy Entertainment Group, Inc*. Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. See *First Nat. Bank of Boston* v. *Bellotti*. As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content. . .

We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead us to this conclusion. . .

Corporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster", *Bellotti*. The Court has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not "natural persons". . .

The Court is thus confronted with conflicting lines of precedent: a pre-*Austin* line that forbids restrictions on political speech based on the speaker's corporate identity and a post-*Austin* line that permits them. No case before *Austin* had held that Congress could prohibit independent expenditures for political speech based on the speaker's corporate identity. Before *Austin* Congress had enacted legislation for this purpose, and the Government urged the same proposition before this Court. See *MCFL, California Medical Assn.* v. *Federal Election Comm'n*. In neither of these cases did the Court adopt the proposition. . .

If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech. If the anti-distortion rationale were to be accepted, however, it would permit Government to ban political speech simply because the speaker is an association that has taken on the corporate form. The Government

contends that *Austin* permits it to ban corporate expenditures for almost all forms of communication stemming from a corporation. If *Austin* were correct, the Government could prohibit a corporation from expressing political views in media beyond those presented here, such as by printing books. The Government responds "that the FEC has never applied this statute to a book," and if it did, "there would be quite [a] good as-applied challenge." This troubling assertion of brooding governmental power cannot be reconciled with the confidence and stability in civic discourse that the First Amendment must secure.

Political speech is "indispensable to decision-making in a democracy, and this is no less true because the speech comes from a corporation rather than an individual." *Bellotti, Buckley*, *Automobile Workers*, *CIO*. This protection for speech is inconsistent with *Austin*'s anti-distortion rationale. *Austin* sought to defend the anti-distortion rationale as a means to prevent corporations from obtaining " 'an unfair advantage in the political marketplace' " by using " 'resources amassed in the economic marketplace.' " But *Buckley* rejected the premise that the Government has an interest "in equalizing the relative ability of individuals and groups to influence the outcome of elections." *Buckley* was specific in stating that "the skyrocketing cost of political campaigns" could not sustain the governmental prohibition. The First Amendment's protections do not depend on the speaker's "financial ability to engage in public discussion."

The Court reaffirmed these conclusions when it invalidated the BCRA provision that increased the cap on contributions to one candidate if the opponent made certain expenditures from personal funds. See *Davis* v. *Federal Election Comm'n*. The rule that political speech cannot be limited based on a speaker's wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker's identity.

Either as support for its anti-distortion rationale or as a further argument, the *Austin* majority undertook to distinguish wealthy individuals from corporations on the ground that "[s]tate law grants corporations special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets." This does not suffice, however, to allow laws prohibiting speech. "It is rudimentary that the State cannot exact as the price of those special advantages the forfeiture of First Amendment rights."

It is irrelevant for purposes of the First Amendment that corporate funds may "have little or no correlation to the public's support for the corporation's political ideas." All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech, even if it was enabled by economic transactions with persons or entities who disagree with the speaker's ideas. . .

The purpose and effect of this law is to prevent corporations, including small and nonprofit corporations, from presenting both facts and opinions to the public. This makes *Austin*'s anti-distortion rationale all the more an aberration. "[T]he First Amendment protects the right of corporations to petition legislative and administrative bodies." *Bellotti*. . .

Even if §441b's expenditure ban were constitutional, wealthy corporations could still lobby elected officials, although smaller corporations may not have the resources to do so. And wealthy individuals and unincorporated associations can spend unlimited amounts on independent expenditures. See, *e.g., WRTL*, Yet certain disfavored associations of citizens—those that have taken on the corporate form—are penalized for engaging in the same political speech. When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.

What we have said also shows the invalidity of other arguments made by the Government. For the most part relinquishing the anti-distortion rationale, the Government falls back on the argument that corporate political speech can be banned in order to prevent corruption or its appearance. In *Buckley*, the Court found this interest "sufficiently important" to

allow limits on contributions but did not extend that reasoning to expenditure limits. When *Buckley* examined an expenditure ban, it found "that the governmental interest in preventing corruption and the appearance of corruption [was] inadequate to justify [the ban] on independent expenditures". . . Limits on independent expenditures, such as §441b, have a chilling effect extending well beyond the Government's interest in preventing *quid pro quo* corruption. The anticorruption interest is not sufficient to displace the speech here in question. Indeed, 26 States do not restrict independent expenditures by for-profit corporations. The Government does not claim that these expenditures have corrupted the political process in those States. . .

When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption. See *McConnell*, The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt: "Favoritism and influence are not . . . avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness". . .

The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. See *Buckley*. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials. This is inconsistent with any suggestion that the electorate will refuse " 'to take part in democratic governance' " because of additional political speech made by a corporation or any other speaker. *McConnell*. . .

This case is about independent expenditures, not soft money. When Congress finds that a problem exists, we must give that finding due deference, but Congress may not choose an unconstitutional remedy. If elected officials succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern. We must give weight to attempts by Congress to seek to dispel either the appearance or the reality of these influences. The remedies enacted by law, however, must comply with the First Amendment; and, it is our law and our tradition that more speech, not less, is the governing rule. An outright ban on corporate political speech during the critical pre-election period is not a permissible remedy. Here Congress has created categorical bans on speech that are asymmetrical to preventing *quid pro quo* corruption. . .

Due consideration leads to this conclusion: *Austin* should be and now is overruled. We return to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations. . .

Given our conclusion we are further required to overrule the part of *McConnell* that upheld BCRA §203's extension of §441b's restrictions on corporate independent expenditures. The *McConnell* Court relied on the anti-distortion interest recognized in *Austin* to uphold a greater restriction on speech than the restriction upheld in *Austin*, and we have found this interest unconvincing and insufficient. This part of *McConnell* is now overruled. . .

McCutcheon v. F.E.C.

572 U.S. 12–536 (2014)

The form and character of corporate participation in the electoral process was defined by the Supreme Court in the *Citizens United* case of 2010. Three years later, the judiciary once again found itself at center of political discussion over the scope of the Bipartisan Campaign Reform Act's regulations. This time the issue concerned the restrictions the law imposed on contributions, both from the perspective of the amount of individual funds given to candidates for federal elections, and the amount of contributions donated in the two-year election cycle, called aggregate limits or overall limits. An Alabama businessman, Shaun McCutcheon, who was deeply involved in contributing to Republican candidates in state and federal elections, challenged the aggregate limits; this prevented him from donating more funds in the 2011–2012 electoral cycle. The *McCutcheon v. F.E.C.* dispute was first adjudicated by the District Court, which found for the Federal Election Commission, upholding the BCRA provisions, and later by the Supreme Court, which announced its verdict in 2014.

Voting along ideological lines, the Justices declared the unconstitutionality of the aggregate limits imposed by the Bipartisan Campaign Reform Act, using similar arguments to those in the *Citizens United* decision. According to the conservative majority, freedom of speech prohibited the government from setting strict limits on two-year election cycle contributions, as it did not serve a compelling state interest, which is to protect the system from corruption and an uncontrolled flow of money. The Justices argued that aggregate limits had no direct relation to the purposes of the campaign finance laws, and their functioning endangered the proper operation of the electoral process as they did not allow contributors to donate to all of the candidates they wanted, thus impairing the right to equal participation in election campaigns. Importantly, one of the Justices, Clarence Thomas, underlined in a concurring opinion the necessity remove all limitations to campaign contributions, which was at the heart of American democracy. Such an approach was criticized by liberals on the Court, who saw in the majority decision a danger to the integrity and effectiveness of the electoral process, and a serious limitation of the right of ordinary citizens to participate equally in the process with rich contributors. Generally, both sides of the conflict used the same arguments in order to argue their opinions, but due to the distribution of votes, the conservative, Republican-supported version of the constitutional interpretation of campaign finance laws has prevailed.

MR. JUSTICE ROBERTS announced the judgment of the Court. . .

There is no right more basic in our democracy than the right to participate in electing our political leaders. Citizens can exercise that right in a variety of ways: They can run for office themselves, vote, urge others to vote for a particular candidate, volunteer to work on a campaign, and contribute to a candidate's campaign. This case is about the last of those options. . .

The statute at issue in this case imposes two types of limits on campaign contributions. The first, called base limits, restricts how much money a donor may contribute to a particular candidate or committee. 2 U. S. C. §441a(a)(1). The second, called aggregate limits, restricts how much money a donor may contribute in total to all candidates or committees. §441a(a)(3). This case does not involve any challenge to the base limits, which we have previously upheld as serving the permissible objective of combatting corruption. The Government contends that the aggregate limits also serve that objective by preventing circumvention of the base limits. We conclude, however, that the aggregate limits do little, if anything, to address that concern, while seriously restricting participation in the democratic process. The aggregate limits are therefore invalid under the First Amendment. . .

The First Amendment "is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, . . . in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests." *Cohen v. California.* As relevant here, the First Amendment safeguards an individual's right to participate in the public debate through political expression and political association. See *Buckley*. When an individual contributes money to a candidate, he exercises both of those rights: The contribution "serves as a general expression of support for the candidate and his views" and "serves to affiliate a person with a candidate". . .

Buckley acknowledged that aggregate limits at least diminish an individual's right of political association. As the Court explained, the "overall $25,000 ceiling does impose an ultimate restriction upon the number of candidates and committees with which an individual may associate himself by means of financial support." But the Court characterized that restriction as a "quite modest restraint upon protected political activity." Ibid. We cannot agree with that characterization. An aggregate limit on how many candidates and committees an individual may support through contributions is not a "modest restraint" at all. The Government may no more restrict how many candidates or causes a donor may support than it may tell a newspaper how many candidates it may endorse.

To put it in the simplest terms, the aggregate limits prohibit an individual from fully contributing to the primary and general election campaigns of ten or more candidates, even if all contributions fall within the base limits Congress views as adequate to protect against corruption. The individual may give up to $5,200 each to nine candidates, but the aggregate limits constitute an outright ban on further contributions to any other candidate (beyond the additional $1,800 that may be spent before reaching the $48,600 aggregate limit). At that point, the limits deny the individual all ability to exercise his expressive and associational rights by contributing to someone who will advocate for his policy preferences. A donor must limit the number of candidates he supports, and may have to choose which of several policy concerns he will advance—clear First Amendment harms that the dissent never acknowledges.

It is no answer to say that the individual can simply contribute less money to more people. To require one person to contribute at lower levels than others because he wants to support more candidates or causes is to impose a special burden on broader participation in the democratic process. And as we have recently admonished, the Government may not penalize an individual for "robustly exercis[ing]" his First Amendment rights. *Davis v. Federal Election Comm'n*.

The First Amendment burden is especially great for individuals who do not have ready access to alternative avenues for supporting their preferred politicians and policies. In the context of base contribution limits, *Buckley* observed that a supporter could vindicate his associational interests by personally volunteering his time and energy on behalf of a candidate. Such personal volunteering is not a realistic alternative for those who wish to support a wide variety of candidates or causes. Other effective methods of supporting preferred candidates or causes without contributing money are reserved for a select few, such as entertainers capable of raising hundreds of thousands of dollars in a single evening. Cf. *Davis*. . .

[T]here are compelling reasons not to define the boundaries of the First Amendment by reference to such a generalized conception of the public good. First, the dissent's "collective speech" reflected in laws is of course the will of the majority, and plainly can include laws that restrict free speech. The whole point of the First Amendment is to afford individuals protection against such infringements. The First Amendment does not protect the government, even when the government purports to act through legislation reflecting "collective speech." Cf. *United States v. Alvarez*; *Wooley v. Maynard*; *West Virginia Bd. of Ed. v. Barnette*.

Second, the degree to which speech is protected cannot turn on a legislative or judicial determination that particular speech is useful to the democratic process. The First Amendment does not contemplate such "ad hoc balancing of relative social costs and benefits." *United States v. Stevens*. . .

Third, our established First Amendment analysis already takes account of any "collective" interest that may justify restrictions on individual speech. Under that accepted analysis, such restrictions are measured against the asserted public interest (usually framed as an important or compelling governmental interest). As explained below, we do not doubt the compelling nature of the "collective" interest in preventing corruption in the electoral process. But we permit Congress to pursue that interest only so long as it does not unnecessarily infringe an individual's right to freedom of speech; we do not truncate this tailoring test at the outset. . .

[W]hile preventing corruption or its appearance is a legitimate objective, Congress may target only a specific type of corruption—"quid pro quo" corruption. As *Buckley* explained, Congress may permissibly seek to rein in "large contributions [that] are given to secure a political quid pro quo from current and potential office holders." In addition to "actual quid pro quo arrangements," Congress may permissibly limit "the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions" to particular candidates.

Spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder's official duties, does not give rise to such quid pro quo corruption. Nor does the possibility that an individual who spends large sums may garner "influence over or access to" elected officials or political parties . . . And because the Government's interest in preventing the appearance of corruption is equally confined to the appearance of quid pro quo corruption, the Government may not seek to limit the appearance of mere influence or access. See *Citizens United*. . .

"When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *United States v. Playboy Entertainment Group, Inc.* Here, the Government seeks to carry that burden by arguing that the aggregate limits further the permissible objective of preventing quid pro quo corruption. The difficulty is that once the aggregate limits kick in, they ban all contributions of any amount. But Congress's selection of a $5,200 base limit indicates its belief that contributions of that amount or less do not create a cognizable risk of corruption. If there is no corruption concern in giving nine candidates up to $5,200 each, it is difficult to understand how a tenth candidate can be regarded as corruptible if given $1,801, and all others corruptible if given a dime. And if there is no risk that additional candidates will be corrupted by donations of up to $5,200, then the Government must defend the aggregate limits by demonstrating that they prevent circumvention of the base limits.

The problem is that they do not serve that function in any meaningful way. In light of the various statutes and regulations currently in effect, *Buckley's* fear that an individual might "contribute massive amounts of money to a particular candidate through the use of unearmarked contributions" to entities likely to support the candidate is far too speculative. And—importantly—we "have never accepted mere conjecture as adequate to carry a First Amendment burden." *Nixon v. Shrink Missouri Government PAC*.

As an initial matter, there is not the same risk of quid pro quo corruption or its appearance when money flows through independent actors to a candidate, as when a donor contributes to a candidate directly. When an individual contributes to a candidate, a party committee, or a PAC, the individual must by law cede control over the funds. The Government admits that if the funds are subsequently re-routed to a particular candidate, such action occurs at the initial recipient's discretion—not the donor's. As a consequence, the chain of attribution grows longer, and any credit must be shared among the various actors along the way. For those reasons, the risk of quid pro quo corruption is generally applicable only to "the narrow category of money gifts that are directed, in some manner, to a candidate or officeholder." *McConnell*.

Buckley nonetheless focused on the possibility that "unearmarked contributions" could eventually find their way to a candidate's coffers. Even accepting the validity of *Buckley's* circumvention theory, it is hard to see how a candidate today could receive a "massive amount[ ] of money" that could be traced back to a particular contributor uninhibited by the aggregate limits. The Government offers a series of scenarios in support of that possibility. But each is sufficiently implausible that the Government has not carried its burden of demonstrating that the aggregate limits further its anti-circumvention interest. . .

Buckley upheld aggregate limits only on the ground that they prevented channeling money to candidates beyond the base limits. The absence of such a prospect today belies the Government's asserted objective of preventing corruption or its appearance. The improbability of circumvention indicates that the aggregate limits instead further the impermissible objective of simply limiting the amount of money in political campaigns. . .

Quite apart from the foregoing, the aggregate limits violate the First Amendment because they are not "closely drawn to avoid unnecessary abridgment of associational freedoms." *Buckle*y. In the First Amendment context, fit matters. Even when the Court is not applying strict scrutiny, we still require "a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is 'in proportion to the interest served,'. . . that employs not necessarily the least restrictive means but. . . a means narrowly tailored to achieve the desired objective." *Board of Trustees of State Univ. of N. Y. v. Fox*. Here, because the statute is poorly tailored to the Government's interest in preventing circumvention of the base limits, it impermissibly restricts participation in the political process. . .

Based on what we can discern from experience, the indiscriminate ban on all contributions above the aggregate limits is disproportionate to the Government's interest in preventing circumvention. The Government has not given us any reason to believe that parties or candidates would dramatically shift their priorities if the aggregate limits were lifted. Absent such a showing, we cannot conclude that the sweeping aggregate limits are appropriately tailored to guard against any contributions that might implicate the Government's anti-circumvention interest.

A final point: It is worth keeping in mind that the base limits themselves are a prophylactic measure. As we have explained, "restrictions on direct contributions are preventative, because few if any contributions to candidates will involve quid pro quo arrangements." *Citizens United*. The aggregate limits are then layered on top, ostensibly to prevent circumvention of the base limits. This "prophylaxis-upon-prophylaxis approach" requires that we be particularly diligent in scrutinizing the law's fit. *Wisconsin Right to Life*.

Finally, disclosure of contributions minimizes the potential for abuse of the campaign finance system. Disclosure requirements are in part "justified based on a governmental interest

in 'provid[ing] the electorate with information' about the sources of election-related spending." *Citizens United*. They may also "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." Disclosure requirements burden speech, but—unlike the aggregate limits—they do not impose a ceiling on speech. *Citizens United*. . . For that reason, disclosure often represents a less restrictive alternative to flat bans on certain types or quantities of speech. See, e.g., *Federal Election Comm'n v. Massachusetts Citizens for Life, Inc*.

With modern technology, disclosure now offers a particularly effective means of arming the voting public with information. In 1976, the Court observed that Congress could regard disclosure as "only a partial measure." *Buckley*. That perception was understandable in a world in which information about campaign contributions was filed at FEC offices and was therefore virtually inaccessible to the average member of the public. Today, given the Internet, disclosure offers much more robust protections against corruption. See *Citizens United*. Reports and databases are available on the FEC's Web site almost immediately after they are filed, supplemented by private entities such as OpenSecrets.org and FollowTheMoney.org. Because massive quantities of information can be accessed at the click of a mouse, disclosure is effective to a degree not possible at the time *Buckley*, or even *McConnell*, was decided.

The existing aggregate limits may in fact encourage the movement of money away from entities subject to dis-closure. Because individuals' direct contributions are limited, would-be donors may turn to other avenues for political speech. See *Citizens United*. Individuals can, for example, contribute unlimited amounts to 501(c) organizations, which are not required to publicly disclose their donors. See 26 U. S. C. §6104(d)(3). Such organizations spent some $300 million on independent expenditures in the 2012 election cycle. . .

For the past 40 years, our campaign finance jurisprudence has focused on the need to preserve authority for the Government to combat corruption, without at the same time compromising the political responsiveness at the heart of the democratic process, or allowing the Government to favor some participants in that process over others. As Edmund Burke explained in his famous speech to the electors of Bristol, a representative owes constituents the exercise of his "mature judgment," but judgment informed by "the strictest union, the closest correspondence, and the most unreserved communication with his constituents." Constituents have the right to support candidates who share their views and concerns. Representatives are not to follow constituent orders, but can be expected to be cognizant of and responsive to those concerns. Such responsiveness is key to the very concept of self-governance through elected officials.

The Government has a strong interest, no less critical to our democratic system, in combatting corruption and its appearance. We have, however, held that this interest must be limited to a specific kind of corruption—quid pro quo corruption—in order to ensure that the Government's efforts do not have the effect of restricting the First Amendment right of citizens to choose who shall govern them. For the reasons set forth, we conclude that the aggregate limits on contributions do not further the only governmental interest this Court accepted as legitimate in *Buckley*. They instead intrude without justification on a citizen's ability to exercise "the most fundamental First Amendment activities." *Buckley*.

Williams-Yulee v. The Florida Bar

575 U.S. 13–1499 (2015)

There are at least two controversies over putting the *Williams-Yulee* Supreme Court decision among other documents relating to federal campaign finance laws. Firstly, it refers to rules which were created by the Florda Bar and applied to the professional conduct of lawyers within the state of Florida. Secondly, the election process, which became of the Court's interest, was a judicial election and action undertaken by a candidate for Florida county court, not the legislative or executive departments. Still, there is a necessity to include the decision, as it also concerns the general problem of conducting electoral campaigns, and the Court's argumentation is connected with the interpretation of the First Amendment's freedom of speech clause. Additionally, it is important to acknowledge that, despite the existence of a conservative block on the Court, Chief Justice John Roberts, jr. decided to move towards a more liberal approach, and delivered the majority opinion, thus revealing possible divisions in Justices' ideology in future campaign finance cases.

Lanell Williams-Yulee participated in the judicial election campaign in Florida, during which she decided to personally solicit campaign donations, which was inconsistent with the rules of the Florida Bar. She also made some inaccurate statements in the media during her campaigning process, misleading public opinion about her opponent in the judicial race. Although there was a possibility of ending the disciplinary procedure against her with a formal reprimend, William-Yulee decided to file a suit, in which she claimed that her freedom of speech rights were infringed by the rules of the Florida Bar. When the case reached the Supreme Court, five Justices ruled against Williams-Yulee, arguing that the ban on personal solicitation of campaign funds by candidates for judicial posts was consistent with compelling state interest. The majority underlined the value of freedom of speech, especially in election campaigns, but the Justices wanted to protect the integrity and sovereignty of the judicial department, which was endangered by such conduct as Williams-Yulee's. Therefore the Court, despite harsh criticism from four conservatives, demonstrated that the interpretation of campaign finance regulations depends mainly on the individual approaches of the Justices towards the scope of First Amendment guaranteees, as well as the meaning of 'compelling state interest', which may be different in cases regarding different branches of government.

MR. JUSTICE ROBERTS delivered the opinion of the Court

Our Founders vested authority to appoint federal judges in the President, with the advice and consent of the Senate, and entrusted those judges to hold their offices during good behavior. The Constitution permits States to make a different choice, and most of them have done so. In 39 States, voters elect trial or appellate judges at the polls. In an effort to preserve public confidence in the integrity of their judiciaries, many of those States prohibit judges and judicial candidates from personally soliciting funds for their campaigns. We must decide whether the First Amendment permits such restrictions on speech.

We hold that it does. Judges are not politicians, even when they come to the bench by way of the ballot. And a State's decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office. A State may assure its people that judges will apply the law without fear or favor—and without having personally asked anyone for money. We affirm the judgment of the Florida Supreme Court.

The First Amendment provides that Congress "shall make no law. . . abridging the freedom of speech." The Fourteenth Amendment makes that prohibition applicable to the States. *Stromberg* v. *California*. The parties agree that Canon 7C(1) restricts Yulee's speech on the basis of its content by prohibiting her from soliciting contributions to her election campaign. The parties disagree, however, about the level of scrutiny that should govern our review.

We have applied exacting scrutiny to laws restricting the solicitation of contributions to charity, upholding the speech limitations only if they are narrowly tailored to serve a compelling interest. See *Riley* v. *National Federation of Blind of N. C., Inc*. As we have explained, noncommercial solicitation "is characteristically intertwined with informative and perhaps persuasive speech." Applying a lesser standard of scrutiny to such speech would threaten "the exercise of rights so vital to the maintenance of democratic institutions." *Schneider* v. *State (Town of Irvington)*.

The principles underlying these charitable solicitation cases apply with even greater force here. Before asking for money in her fundraising letter, Yulee explained her fitness for the bench and expressed her vision for the judiciary. Her stated purpose for the solicitation was to get her "message out to the public." As we have long recognized, speech about public issues and the qualifications of candidates for elected office commands the highest level of First Amendment protection. See *Eu* v. *San Francisco County Democratic Central Comm.*, Indeed, in our only prior case concerning speech restrictions on a candidate for judicial office, this Court and both parties assumed that strict scrutiny applied. *Republican Party of Minn.* v. *White*.

Although the Florida Supreme Court upheld Canon 7C(1) under strict scrutiny, the Florida Bar and several *amici* contend that we should subject the Canon to a more permissive standard: that it be "closely drawn" to match a "sufficiently important interest." *Buckley* v. *Valeo*. The "closely drawn" standard is a poor fit for this case. The Court adopted that test in *Buckley* to address a claim that campaign contribution limits violated a contributor's "freedom of political association." Here, Yulee does not claim that Canon 7C(1) violates her right to free association; she argues that it violates her right to free speech. And the Florida Bar can hardly dispute that the Canon infringes Yulee's freedom to discuss candidates and public issues—namely, herself and her qualifications to be a judge. The Bar's call to import the "closely drawn" test from the contribution limit context into a case about solicitation therefore has little avail.

As several of the Bar's *amici* note, we applied the "closely drawn" test to solicitation restrictions in *McConnell* v. *Federal Election Comm'n*, overruled in part by *Citizens United* v. *Federal Election Comm'n*, But the Court in that case determined that the solicitation restrictions operated primarily to prevent circumvention of the contribution limits, which

were the subject of the "closely drawn" test in the first place. *McConnell* offers no help to the Bar here, because Florida did not adopt Canon 7C(1) as an anti-circumvention measure.

In sum, we hold today what we assumed in *White*: A State may restrict the speech of a judicial candidate only if the restriction is narrowly tailored to serve a compelling interest. . .

The Florida Bar faces a demanding task in defending Canon 7C(1) against Yulee's First Amendment challenge. We have emphasized that "it is the rare case" in which a State demonstrates that a speech restriction is narrowly tailored to serve a compelling interest. *Burson* v. *Freeman*. But those cases do arise. *Holder* v. *Humanitarian Law Project*, *McConnell*, *Adarand Constructors, Inc.* v. *Peña*, Here, Canon 7C(1) advances the State's compelling interest in preserving public confidence in the integrity of the judiciary, and it does so through means narrowly tailored to avoid unnecessarily abridging speech. This is therefore one of the rare cases in which a speech restriction withstands strict scrutiny.

The Florida Supreme Court adopted Canon 7C(1) to promote the State's interests in "protecting the integrity of the judiciary" and "maintaining the public's confidence in an impartial judiciary." The way the Canon advances those interests is intuitive: Judges, charged with exercising strict neutrality and independence, cannot supplicate campaign donors without diminishing public confidence in judicial integrity. . . Simply put, Florida and most other States have concluded that the public may lack confidence in a judge's ability to administer justice without fear or favor if he comes to office by asking for favors.

The interest served by Canon 7C(1) has firm support in our precedents. We have recognized the "vital state interest" in safeguarding "public confidence in the fairness and integrity of the nation's elected judges." *Caperton* v. *A. T. Massey Coal Co.* The importance of public confidence in the integrity of judges stems from the place of the judiciary in the government. Unlike the executive or the legislature, the judiciary "has no influence over either the sword or the purse; . . . neither force nor will but merely judgment." The Federalist No. 78. The judiciary's authority therefore depends in large measure on the public's willingness to respect and follow its decisions. As Justice Frankfurter once put it for the Court, "justice must satisfy the appearance of justice." *Offutt* v. *United States*. It follows that public perception of judicial integrity is "a state interest of the highest order." *Caperton*.

The principal dissent observes that bans on judicial candidate solicitation lack a lengthy historical pedigree. We do not dispute that fact, but it has no relevance here. As the precedent cited by the principal dissent demonstrates, a history and tradition of regulation are important factors in determining whether to recognize "new categories of unprotected speech." *Brown* v. *Entertainment Merchants Assn*. But nobody argues that solicitation of campaign funds by judicial candidates is a category of unprotected speech. As explained above, the First Amendment fully applies to Yulee's speech. The question is instead whether that Amendment permits the particular regulation of speech at issue here.

The parties devote considerable attention to our cases analyzing campaign finance restrictions in political elections. But a State's interest in preserving public confidence in the integrity of its judiciary extends beyond its interest in preventing the appearance of corruption in legislative and executive elections. As we explained in *White*, States may regulate judicial elections differently than they regulate political elections, because the role of judges differs from the role of politicians. Politicians are expected to be appropriately responsive to the preferences of their supporters. Indeed, such "responsiveness is key to the very concept of self-governance through elected officials." *McCutcheon* v. *Federal Election Comm'n*. The same is not true of judges. In deciding cases, a judge is not to follow the preferences of his supporters, or provide any special

consideration to his campaign donors. A judge instead must "observe the utmost fairness," striving to be "perfectly and completely independent, with nothing to influence or control him but God and his conscience." Address of John Marshall, in Proceedings and Debates of the Virginia State Convention of 1829–1830, p. 616 (1830). As in *White*, therefore, our precedents applying the First Amendment to political elections have little bearing on the issues here.

The vast majority of elected judges in States that allow personal solicitation serve with fairness and honor. But "[e]ven if judges were able to refrain from favoring donors, the mere possibility that judges' decisions may be motivated by the desire to repay campaign contributions is likely to undermine the public's confidence in the judiciary." *White*. In the eyes of the public, a judge's personal solicitation could result (even unknowingly) in "a possible temptation. . . which might lead him not to hold the balance nice, clear and true." *Tumey* v. *Ohio*. That risk is especially pronounced because most donors are lawyers and litigants who may appear before the judge they are supporting.

The concept of public confidence in judicial integrity does not easily reduce to precise definition, nor does it lend itself to proof by documentary record. But no one denies that it is genuine and compelling. In short, it is the regrettable but unavoidable appearance that judges who personally ask for money may diminish their integrity that prompted the Supreme Court of Florida and most other States to sever the direct link between judicial candidates and campaign contributors. As the Supreme Court of Oregon explained, "the spectacle of lawyers or potential litigants directly handing over money to judicial candidates should be avoided if the public is to have faith in the impartiality of its judiciary." *In re Fadeley*. Moreover, personal solicitation by a judicial candidate "inevitably places the solicited individuals in a position to fear retaliation if they fail to financially support that candidate." *Simes*, Potential litigants then fear that "the integrity of the judicial system has been compromised, forcing them to search for an attorney in part based upon the criteria of which attorneys have made the obligatory contributions." A State's decision to elect its judges does not require it to tolerate these risks. The Florida Bar's interest is compelling. . .

A State may decide that the threat to public confidence created by personal solicitation exists apart from the amount of money that a judge or judicial candidate seeks. Even if Florida decreased its contribution limit, the appearance that judges who personally solicit funds might improperly favor their campaign donors would remain. Although the Court has held that contribution limits advance the interest in preventing *quid pro quo* corruption and its appearance in political elections, we have never held that adopting contribution limits precludes a State from pursuing its compelling interests through additional means. And in any event, a State has compelling interests in regulating judicial elections that extend beyond its interests in regulating political elections, because judges are not politicians. . .

In sum, because Canon 7C(1) is narrowly tailored to serve a compelling government interest, the First Amendment poses no obstacle to its enforcement in this case. As a result of our decision, Florida may continue to prohibit judicial candidates from personally soliciting campaign funds, while allowing them to raise money through committees and to otherwise communicate their electoral messages in practically any way. The principal dissent faults us for not answering a slew of broader questions, such as whether Florida may cap a judicial candidate's spending or ban independent expenditures by corporations. Yulee has not asked these questions, and for good reason—they are far afield from the narrow regulation actually at issue in this case.

We likewise have no cause to consider whether the citizens of States that elect their judges have decided anything about the "oracular sanctity of judges" or whether judges are due "a hearty helping of humble pie." The principal dissent could be right that the decision to adopt judicial elections "probably springs," at least in part, from a desire to make judges more accountable to the public, *ibid.,* although the history on this matter is more complicated. In any event, it is a long way from general notions of

judicial accountability to the principal dissent's view, which evokes nothing so much as Delacroix's painting of Liberty leading a determined band of *citoyens*, this time against a robed aristocracy scurrying to shore up the ramparts of the judicial castle through disingenuous ethical rules. We claim no similar insight into the People's passions, hazard no assertions about ulterior motives of those who promulgated Canon 7C(1), and firmly reject the charge of a deceptive "pose of neutrality" on the part of those who uphold it. . .

Our limited task is to apply the Constitution to the question presented in this case. Judicial candidates have a First Amendment right to speak in support of their campaigns. States have a compelling interest in preserving public confidence in their judiciaries. When the State adopts a narrowly tailored restriction like the one at issue here, those principles do not conflict. A State's decision to elect judges does not compel it to compromise public confidence in their integrity.

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